

**Note: The Underground Storage Tank Program (Program) is providing the following draft version of the Program rules that were effective on March 28, 2006. The official version of the Program rules will not be available from the Secretary of State until September or October. The content of the following rules will not change. However, the Secretary of State may make minor grammar or punctuation changes that will not change the meaning of the rules.**

**The draft rules provide as follows:**

## Sub-Chapter 1

### General Provisions

**17.56.101 DEFINITIONS** For the purposes of this chapter and unless otherwise provided, the following terms have the meanings given to them in this rule and shall be used in conjunction with those definitions in 75-11-503, MCA.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system or tank system and aboveground releases associated with overfills and transfer operations as the regulated substances moves to or from an UST system.

(2) "Aboveground storage tank" or "AST" means any one or a combination of tanks that is used to contain an accumulation of petroleum or petroleum products, and the volume of which is 90% or more above the surface of the ground.

(3) "Active tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank that is being used, or is capable of being used, for dispensing, depositing or storing a regulated substance and is not inactive as defined in (31).

(4) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(5) "Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(6) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(7) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For

example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(8) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(9) "CERCLA" means the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended.

(10) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(11) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(12) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(13) "Consumptive use" with respect to heating oil means consumed on the premises.

(14) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(15) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(16) "Department" means the department of environmental quality created by 2-15-3501, MCA.

(17) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(18) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(19) "Excavation zone" means the volume containing the tank system and

backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(20) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before November 3, 1989. Installation is considered to have commenced if:

(a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and

(b) either a continuous on-site physical construction or installation program has begun, or the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(21) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(22) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(23) "Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

(24) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(25) "Ground water" means water below the land surface in a zone of saturation.

(26) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(27) "Hazardous waste" means a hazardous waste as defined by 75-10-403, MCA.

(28) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(29) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(30) "Implementing agency" means an office or program of a local governmental unit, designated by the department pursuant to ARM 17.56.1003, in which the PST or UST system is located. Only one local governmental unit may act as an implementing agency for any given PST or UST system.

(31) "Inactive tank" means, for the purpose of determining operating permit and compliance inspection requirements in subchapter 3 and closure requirements in subchapter 7, an underground storage tank for which the department has received written notice, in accordance with ARM 17.56.701, that the tank is currently not being used for dispensing, depositing or storing a regulated substance.

(32) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

(33) "Installer" means an individual who is engaged in the business of installation or closure of underground storage tanks.

(34) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(35) "Local governmental unit" means a city, town, county, or fire district.

(36) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(37) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

(38) "New tank performance standards" includes design, construction, installation, release detection and compatibility standards.

(39) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after the effective date of this rule.

(40) "Noncommercial purposes" with respect to motor fuel means not for resale.

(41) "Oil/water Separator" means a flow-through tank designed to separate petroleum from water. The term does not include piping or tanks that contain petroleum effluent.

(42) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

(43) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subchapter 7.

(44) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(45) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(46) "Out of service" means that the normal operation of the UST system is discontinued as characterized by the fact that no regulated substances are being deposited into or drawn from the system; and

(a) leak detection or leak prevention procedures are not conducted in a manner normally associated with an in-service system of a similar type and purpose; or

(b) for emergency generator tanks, used oil tanks, heating oil tanks, or hazardous substance tanks, the infrequent use of the UST system cannot be justified as part of its purpose.

(47) "Owner" means:

for purposes of administration of Title 75, chapter 11, part 2, MCA, the term as defined in 75-11-203, MCA;

(b) for purposes of administration of Title 75, chapter 11, part 3, MCA, the term as defined in 75-11-302, MCA, and

(c) unless otherwise provided in statute or rule, for purposes of administration of Title 75, chapter 11, part 5, MCA, any person who:

(i) holds title to, controls, or possesses an interest in an UST system; or

(ii) owns the property on which an UST system is located. The term does not include a person who holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(48) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(49) "Petroleum storage tank" or "PST" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503, MCA;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground pipes associated with tanks under (47)(b) and (c), except that pipelines regulated under the following laws are excluded:

(i) the Pipeline Safety Laws (49 USC 60101, et seq.); and

(ii) state law comparable to the provisions of law referred to in (47)(d)(i), if the facility is intrastate.

(50) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and

used oils.

(51) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

(52) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(53) "Public water supply system" means a public water supply system as defined by 75-6-107, MCA.

(54) "RCRA" means the federal Resource Conservation and Recovery Act of 1986.

(55) "Regulated substance" means a hazardous substance as defined in 75-10-602, MCA; or petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute); does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4, MCA.

(56) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank system into ground water, surface water or subsurface soils.

(57) "Release detection" means determining whether a release of a regulated substance has occurred from the tank system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(58) "Repair" means to restore a damaged or leaking tank or UST system component to the manufacturer's original design standards.

(59) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(60) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, as amended, 42 USC 300f et seq. and implementing regulations in 40 CFR Parts 141 and 142.

(61) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(62) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(63) "Significant noncompliance" means the existence of one or more violations that:

(a) cause, or may cause, a substantial, continuing risk to public health and the environment;

(b) substantially deviate from a requirement of this chapter; or

(c) include failure to install, maintain, or operate equipment essential to preventing or detecting leaks.

(64) "State fire marshal" means the state fire marshal as provided for in 2-15-2005, MCA.

(65) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of

surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(66) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(67) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(68) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(69) "Underground release" means any belowground release.

(70) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

(71) "UST system" or "tank system" means an underground storage tank or petroleum storage tank, as appropriate, underground ancillary equipment, and containment system, if any.

(72) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

17.56.102 APPLICABILITY (1) Except as otherwise provided in (2) through (6), this chapter applies to all owners and operators of UST systems and to all owners and operators of petroleum storage tanks who seek or intend to seek reimbursement from the Montana petroleum tank release cleanup fund. An UST system listed in (4) or (5) must comply with ARM 17.56.104.

(2) This chapter does not apply to the following UST systems:

(a) any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Subchapters 2, 3, 4, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of PSTs and UST systems:

(a) equipment or machinery that contains regulated substances for operation purposes such as hydraulic lift tanks and electrical equipment tanks;

(b) any UST system that contains a de minimis concentration of regulated substances;

(c) any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(d) a storage tank that is situated in an underground area such as a basement, cellar, mine draft, shaft, or tunnel;

(e) an aboveground storage tank with a capacity less than 30,000 gallons;

(f) aboveground pipes associated with tanks under (3)(d) or (e), except that pipelines regulated under the following laws are excluded:

- (i) the Pipeline Safety Laws (49 USC 60101, et seq.); and
- (ii) state law comparable to the provisions of law referred to in (3)(f)(i), if the facility is intrastate; or
- (g) oil/water separators.

(4) Subchapters 2, 3, 4, 5, 7, 8, 9, 10, 13, and 14 do not apply to any of the following types of UST systems:

- (a) wastewater treatment tank systems;
- (b) any UST system containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following); and
- (c) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR Part 50, Appendix A.

(5) Subchapters 2, 3, 4, and 8 do not apply to any of the following types of UST systems:

- (a) any UST system whose capacity is 110 gallons or less.
  - (b) airport hydrant fuel distribution system; and
  - (c) UST systems with field-constructed tanks.
- (6) Subchapter 8 does not apply to any of the following types of UST systems:
- (a) farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
  - (b) tank used for storing heating oil for consumptive use on the premises where stored; and
  - (c) underground pipes connected to an aboveground storage tank.

17.56.104 TANK STANDARDS FOR EXEMPTED UST SYSTEMS No person may install an UST system listed in ARM 17.56.102(4) or (5) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

- (1) will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (2) is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- (3) is constructed or lined with material that is compatible with the stored substance.

17.56.105 VARIANCES (1) Any person subject to this chapter may request in writing that a variance from any requirement or procedure of this chapter be granted by the department to the requestor if the request includes approval of an alternate requirement or procedure.

- (2) The written request must include the following:
  - (a) the specific site for which a variance is sought;



- (b) the specific provision of this chapter from which the variance is sought;
- (c) the time period for which the variance is sought;
- (d) the reason the variance is requested; and
- (e) the alternate procedure or requirement for which approval is sought and a demonstration that the alternate procedure or requirement provides an equivalent or greater degree of protection for the public health, welfare, safety and environment as the established requirement.

(3) The department shall grant or deny a variance requested in accordance with (1) within 30 days of receipt of the information required by (2) above. The department may only grant the variance if the applicant proves compliance with the requirements of (2)(e) by substantial evidence.

(4) The department, on its own initiative, may issue a variance from any requirement or procedure of this chapter when noncompliance is discovered as a result of a compliance inspection, immediate compliance is impracticable, and the cost of immediate compliance is disproportionate to the benefit provided.

(a) A variance under (4) may be issued only when the department makes a written determination that delaying compliance does not create a significant increased threat to the public health, welfare, safety and the environment.

(b) A variance issued under (4) may postpone compliance only until the earliest practicable time for replacement or upgrading the facility UST systems as identified in department findings.

(c) The department may define a time period for each variance granted under (4). In no case may a variance be issued under (4) for a term longer than 15 years.

(5) A variance issued under (4) must include the following:

- (a) the specific provision of this chapter to which the variance applies;
- (b) the time period for the variance; and
- (c) any conditions or other procedures, methods or equipment that the department determines are required in order to minimize the risk of release during the term of the variance.

(6) In order to reduce the risk of a release, any variance granted or issued by the department under this rule may be subject to conditions which may include implementation of procedures, methods, and the use of equipment not specifically required by law or rules.

#### 17.56.120 NOTICE OF ASSESSMENT OF ADMINISTRATIVE PENALTY

(1) When the department assesses an administrative penalty under these rules, the department shall serve written notice on the alleged violator or the alleged violator's agent personally or by certified mail. Service by mail is complete on the day of receipt. The notice must state:

- (a) the provisions alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under these rules;
- (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;
- (e) the nature of the corrective action that the department requires,

whether or not a portion of the penalty is to be suspended;  
 (f) an estimate of the costs of compliance with the corrective action;  
 (g) where to receive help to correct the alleged violation;  
 (h) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;  
 (i) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and  
 (j) that a formal proceeding may be waived.

#### 17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) Administrative penalties assessed under these rules may not exceed \$500 per day for each violation and may not be less than the minimum penalty prescribed in (2) of this rule.

(2) For each violation, the department shall assess the maximum administrative penalty, and allow the time for corrective action, specified in the table in this rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

VIOLATION	MAXIMUM PENALTY  \$	MINIMUM PENALTY  \$	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(a) Failure to notify the department of an UST system	300	150	yes	10 days
(b) Failure to register an UST system	100	50	yes	10 days
(c) Failure to report a suspected or confirmed release/spill within 24 hours	500	500	no	not applicable
(d) Failure to investigate or respond to a release	500	250	yes	15 days
(e) Failure to temporarily or permanently close an UST system properly	500	250	yes	30 days
(f) Failure to properly install an UST system	500	250	yes	30 days
(g) Failure to install release detection or corrosion protection	500	250	yes	30 days

(h) Failure to provide spill/overflow prevention equipment	500	250	yes	15 days
(i) Failure to provide automatic line leak detection	500	250	yes	15 days
(j) Failure to install properly designed and constructed UST system components	300	150	yes	45 days
(k) Failure to perform release detection	300	150	yes	30 days
(l) Failure to provide financial assurance	300	150	yes	30 days
(m) Failure to maintain release detection or corrosion protection equipment	200	100	yes	30 days
(n) Failure to provide required records within 48 hours of notice	100	100	no	not applicable
(o) Failure to maintain required records	100	50	yes	30 days
(p) Failure to obtain a compliance inspection within the statutory time	500	250	no	not applicable
(q) Operating an UST without a valid operating permit	500	500	no	not applicable
(r) Failure to correct violations noted in a compliance inspection report within the time allowed by rule	500	250	yes	30 days
(s) Failure to obtain a follow-up inspection after correcting violations noted in a compliance inspection report	500	100	yes	10 days
(t) Failure to empty an UST that is not in compliance with rules related to release prevention and detection and corrosion protection in subchapters 2, 3 and 4	500	300	yes	15 days
(u) Failure to notify of change of ownership	500	250	yes	15 days
(v) Failure to file inspection report within 10 days of inspection	500	250	yes	10 days

(3) Upon receipt of a written notice that corrective action required by the department has been completed, the department may suspend a portion of the administrative penalty.

(4) To verify that corrective action has been completed, the department may inspect the site of the violation and any records regarding the corrective action.

Sub-Chapter 2  
UST Systems:  
Design, Construction and Installation

17.56.201 PERFORMANCE STANDARDS FOR NEW UST SYSTEMS

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(a) Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in (1)(a)(i) through (iii):

(i) the tank is constructed of fiberglass-reinforced plastic in accordance with any one of the standards adopted by reference in (1)(f); or

(ii) the tank is constructed of steel and cathodically protected in the following manner and in accordance with any one of the standards adopted by reference in (1)(g):

(A) the tank is coated with a suitable dielectric material;

(B) field-installed cathodic protection systems are designed by a corrosion expert;

(C) impressed current systems are designed to allow determination of current operating status as required in ARM 17.56.302(3); and

(D) cathodic protection systems are operated and maintained in accordance with ARM 17.56.302; or

(iii) the tank is constructed of a steel-fiberglass-reinforced-plastic composite in accordance with the standards adopted by reference in (1)(j)(i) and (ii).

(b) The piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be properly designed, constructed, and protected from corrosion in accordance with any one of the codes of practice developed by a nationally recognized association or independent testing laboratory adopted by reference in (1)(b)(i) and (ii):

(i) the piping is constructed of fiberglass-reinforced plastic in accordance with all of the standards adopted by reference in (1)(i); or

(ii) the piping is constructed of steel and cathodically protected in the following manner and in accordance with all of the standards adopted by reference in (1)(j):

(A) the piping is coated with a suitable dielectric material;

(B) field-installed cathodic protection systems are designed by a corrosion expert;

(C) impressed current systems are designed to allow determination of current operating status as required in ARM 17.56.302(3); and

(D) cathodic protection systems are operated and maintained in accordance with ARM 17.56.302.

(c) To prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) overfill prevention equipment that will:

(A) automatically shut off flow into the tank when the tank is no more than 95% full; or

(B) alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.

(d) All tanks and piping must be properly installed in accordance with this chapter, the manufacturer's instructions or specifications, all permit conditions, and all applicable standards adopted by reference in (1)(k).

(e) Upon completion of all work and testing performed pursuant to a permit issued under subchapter 13 for the installation or modification of an underground storage tank system, the licensed installer or department inspector must certify, on a form approved by the department, compliance with the following requirements:

(i) installation or modification in accordance with (1)(d);

(ii) corrosion protection of steel tanks and piping under (1)(a) and (b);

(iii) release detection under ARM 17.56.402 and 17.56.403; and

(iv) spill and overfill protection under ARM 17.56.301.

(f) The department hereby adopts and incorporates by reference:

(i) Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(ii) Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products" which sets forth requirements for the manufacture and installation of horizontal reinforced plastic underground tanks for petroleum products and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(iii) American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" which sets forth design standards for FRP UST tanks and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(g) The department hereby adopts and incorporates by reference:

(i) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks" which sets forth design and installation standards of cathodically protected steel underground storage tanks and a copy of which may be obtained from Steel Tank Institute,

728 Anthony Trail, Northbrook, IL 60062, (312) 498-1980;

(ii) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(iii) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-5603.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(iv) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," a copy of which may be obtained from NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200 and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" which sets forth design standards for cathodically protected steel underground storage tanks, a copy of which may be obtained from Underwriters Laboratory, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709.

(h) The department hereby adopts and incorporates by reference:

(i) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth requirements for corrosion protection systems for underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709; and

(ii) The Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks" which sets forth a minimum consensus standard for the fabrication of FRP clad/composite tanks and a copy of which may be obtained from The Association for Composite Tanks, 108 N. State Street, Suite 720, Chicago, IL 60602.

(i) The department hereby adopts and incorporates by reference:

(i) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe" which sets forth design standards for fiberglass reinforced plastic pipe and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(ii) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas" which sets forth manufacture and installation standards for pipe connectors and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(iii) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber

Reinforced Plastic Pipe and Fittings for Flammable Liquids" which sets forth requirements of manufacture and installation of fiberglass reinforced plastic pipe and fittings and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9; and

(iv) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors" which sets forth requirements for flexible underground hose connectors for petroleum products and a copy of which may be obtained from Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9.

(j) The department hereby adopts and incorporates by reference:

(i) "Uniform Fire Code", article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible liquids are stored or dispensed, and a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473;

(ii) American Petroleum Institute Recommended Practice 1615 "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets forth requirements for sound installation of UST systems, and a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(iii) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" which sets forth the cathodic protection standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(iv) National Association of Corrosion Engineers RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" which sets forth practices for the control of external corrosion or buried or submerged metallic piping systems, and a copy of which may be obtained from NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200.

(k) The department hereby adopts and incorporates by reference:

(i) American Petroleum Institute Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems" (5th edition, revised March 1996) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956;

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" (revised 2000) which sets forth proper installation procedures for UST systems, a copy of which may be obtained from Petroleum Equipment Institute, PO Box 2380, Tulsa, OK 74101, (918) 494-9696; and

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" which sets forth proper installation and design standards for piping of an UST system and a copy of

which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

17.56.202 UPGRADING OF EXISTING UST SYSTEMS (1) No later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

- (a) new UST system performance standards under ARM 17.56.201;
  - (b) the upgrading requirements in (2) through (4); or
  - (c) closure requirements under subchapter 7, including applicable requirements for corrective action under subchapter 6.
- (2) Steel tanks must be upgraded to meet any one of the following requirements in accordance with all of the standards adopted by reference in (5):
- (a) a tank may be upgraded by internal lining if:
    - (i) the lining is installed in accordance with the requirements of ARM 17.56.304, and
    - (ii) within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
  - (b) a tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of ARM 17.56.201(1)(a)(ii)(B), (C) and (D) and the integrity of the tank is ensured using one of the following methods:
    - (i) the tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
    - (ii) the tank has been installed for less than 10 years and is monitored monthly for releases in accordance with ARM 17.56.407(1)(d) through (g); or
    - (iii) the tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of ARM 17.56.407(1)(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system.
  - (c) A tank may be upgraded by both internal lining and cathodic protection if:
    - (i) the lining is installed in accordance with the requirements of ARM 17.56.304; and
    - (ii) the cathodic protection system meets the requirements of ARM 17.56.201(1)(a)(ii)(B), (C) and (D).
- (3) Metal piping that may contain regulated substances, including vent lines and fill lines, and is in contact with the ground, must be cathodically protected in accordance with all of the standards adopted by reference in ARM 17.56.201(1)(j) and must meet the requirements of ARM 17.56.201(1)(b)(ii)(B), (C) and (D).
- (4) To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in ARM



17.56.201(1)(c).

(5) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" which sets forth repair and lining of standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" which sets forth repair and lining standards for UST systems and a copy of which may be obtained from National Leak Prevention Association, 7685 Sields Ertel Road, Cincinnati, OH 45241, (800) 543-1838;

(c) National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection" which sets forth cathodic protection standards for buried or submerged metallic liquid storage systems, a copy of which may be obtained from NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" which sets forth cathodic protection standards for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

17.56.203 ADDITIONAL PERFORMANCE STANDARDS FOR NEW UNDERGROUND PIPING CONNECTED TO ABOVEGROUND TANKS OR TO UNDERGROUND TANKS NOT LOCATED AT A FARM OR RESIDENCE WITH A CAPACITY OF 1100 GALLONS OR LESS USED TO STORE HEATING OIL

(1) Primary underground piping connected to above ground tanks or to underground tanks with a capacity of 660 gallons or less used exclusively to store heating oil for consumptive use on the premises where stored may be constructed of copper provided that the piping is enclosed in secondary containment consistent with these rules.

(2) In addition to cathodically protected steel or non-metallic pipe listed for use with petroleum products and/or motor fuels, schedule 40 or greater PVC pipe and fittings may be used to provide secondary containment for heating oil tank systems subject to this rule provided that only adhesives resistant to petroleum products are used to bond PVC joints.

(3) If liquid or vapor sensors are not used to monitor the interstitial space for a release, the piping system must be installed so that any liquid released into the interstitial space will not move more than 20 feet before being visually detected in a sump or standpipe.

### Sub-Chapter 3 General Operating Requirements

17.56.301 SPILL AND OVERFILL CONTROL (1) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The transfer procedures described in Article 79, Division XII of the Uniform Fire Code adopted by reference in (3) shall be used to comply with this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(2) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with ARM 17.56.505.

(3) The department hereby adopts and incorporates by reference the Uniform Fire Code, Article 79, "Flammable and Combustible Liquids" (1997 edition) which sets forth the fire protection requirements where flammable and combustible materials are stored or dispensed, a copy of which may be obtained from Uniform Fire Code Association, 1260 Lake Boulevard, Suite 250, Davis, CA 95616, (888) 785-3473. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" (2000 edition) which sets forth transferring and dispensing practices for flammable and combustible liquids and a copy of which may be obtained from Global Engineering Documents, 15 Inverness Way East, M/S C303B, Englewood, CO 80112-5776, (303) 397-7956, or National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (800) 344-3555.

17.56.302 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (1) All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) all cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and

(ii) the criteria that are used to determine that cathodic protection is adequate as required by this rule must be in accordance with National

Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", adopted by reference in (1)(e).

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained in accordance with ARM 17.56.305 to demonstrate compliance with the performance standards in this rule. These records must provide the following:

(i) the results of the last three inspections required in (1)(c); and

(ii) the results of testing from the last two inspections required in (1)(b).

(e) The department hereby adopts and incorporates by reference National Association of Corrosion Engineers Standard RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection" which sets forth cathodic protection system standards for prevention of corrosion on buried or submerged metallic UST systems, and a copy of which may be obtained from NACE, International, PO Box 201009, Houston, TX 77216-1009, (281) 228-6200.

17.56.303 COMPATIBILITY (1) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators storing alcohol blends shall use the following codes adopted by reference in (2) below to comply with the requirements of this rule:

(a) American Petroleum Institute Publication 1620, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(2) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Publication 1620, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations" which sets forth requirements for storing and handling regulated substances at UST facilities and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations" which sets forth requirements for storing and handling regulated substances of UST facilities and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375.

17.56.304 REPAIRS (1) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances. Owners and

operators must receive a permit from the department prior to making any repair of an UST system.

(2) Tanks not meeting the design or construction standards of the applicable code of practice adopted by reference in (4) may not be repaired and must be closed in accordance with ARM 17.56.702.

(3) Repairs must meet the following requirements:

(a) Repairs to UST systems must be conducted in accordance with all applicable state, federal and local laws and regulations and the applicable code of practice adopted by reference in (4). If there is a conflict in the referenced codes, the more stringent and protective code shall apply.

(b) Tanks must be repaired according to the manufacturer's recommendation and under the supervision on site of a manufacturer's authorized representative or the tank manufacturer must certify that the repaired tank meets the manufacturer's design standards.

(c) The tank manufacturer must re-warranty the repaired tank for 10 years or the remainder of the original warranty period, whichever is longer.

(d) The department may require excavation of the tank to be repaired so that the outer wall of the tank may be inspected and tested for defects.

(e) Metal pipe sections and fittings that are damaged or have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings must be repaired in accordance with the manufacturer's specifications or be replaced.

(f) Upon completion of the repair and before the UST system is placed in service, the following tests must be performed:

(i) repaired tanks and piping must be tightness tested in accordance with ARM 17.56.407(1)(c) and 17.56.408(1)(b); and

(ii) corrosion protection systems circuitry must be tested to ensure it is still functioning.

(g) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with ARM 17.56.302(1)(b) and (c) to ensure that it is operating properly.

(h) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this rule.

(4) The department hereby adopts and incorporates by reference:

(a) Underwriters Laboratories Standard 1316, 2nd revised ed. April 12, 1996, "Standard for Safety for Glass-Fiber-Reinforced Plastic Underground Storage Tanks" which sets forth requirements for the manufacture and installation of glass-fiber-reinforced plastic underground storage tanks for petroleum products and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(b) Underwriters Laboratories Standard 1746, 2nd revised ed. September 24, 1998, "Corrosion Protection Systems for Underground Storage Tanks" which sets forth design standards for cathodically protected steel underground storage tanks and a copy of which may be obtained from Underwriters Laboratories, Inc., 12 Laboratory Drive, Research Triangle Park, NC 27709;

(c) American Society of Testing and Materials Standard D4021-92, (1992 edition), "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks" which sets forth design standards for FRP UST tanks and a copy of which may be obtained from The American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017;

(d) Steel Tank Institute "Specifications and Manual for External Corrosion Protection of Underground Steel Storage Tanks #STI-P3, STI-P3-99" (1999 edition) which sets forth design and installation standards of cathodically protected steel underground storage tanks and a copy of which may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265; and

(e) Steel Tank Institute ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks F894-99" (1999 edition) which sets forth a minimum consensus standard for the fabrication, installation and repair of FRP clad/composite tanks and a copy of which may be obtained from the Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047, (800) 438-8265.

17.56.305 REPORTING AND RECORDKEEPING (1) Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department or the implementing agency, or both as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of RCRA, as amended or pursuant to other state laws or rules or both.

(a) Owners and operators must submit the following information to the department:

(i) notification for all UST systems which includes certification of installation for new UST systems;

(ii) reports of all releases including suspected releases, spills and overfills, and confirmed releases;

(iii) corrective actions planned or taken including initial abatement measures, initial site history, free product removal, the result of remedial investigations, and cleanup plan; and

(iv) a notification before permanent closure or change-in-service.

(b) Owners and operators must maintain the following information:

(i) documentation of operation of corrosion protection equipment;

(ii) documentation of UST system repairs;

(iii) recent compliance with release detection requirements; and

(iv) results of the site investigation conducted at permanent closure.

(c) Owners and operators must keep the records required either:

(i) at the UST site and immediately available for inspection by the department or the implementing agency;

(ii) at a readily available alternative site and be provided for inspection by the department or the implementing agency upon request; or

(iii) in the case of permanent closure records required under ARM 17.56.705, owners and operators are also provided with the additional alternative

of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

(2) The department shall issue an operating permit when the owner or operator has filed with the department an inspection report signed by a licensed compliance inspector and the department determines, on the basis of the inspection report and other relevant information, that the operation and maintenance of the underground storage tank systems at that facility are not in significant noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder on the date of the inspection. The department may issue and renew permits for tanks that are in significant noncompliance with applicable requirements. The department may take enforcement actions, including actions for penalties, and may pursue any other remedy available to the department to address noncompliance with statutes, rules, permits, or orders issued pursuant to this chapter.

(3) If a filed inspection report contains substantive errors or inconsistencies, the department may, before determining whether to issue an operating permit, correct the report based on available information, require the inspector to provide additional information or require the owner or operator to obtain a follow-up inspection.

(4) An operating permit must be issued for three years.

(5) The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in (2) and (4). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of revocation.

(6) The department may suspend, revoke, or determine not to renew an operating permit and tag issued under this rule upon its finding that there is substantial evidence that:

(a) the underground storage tank system for which the permit was issued is in significant noncompliance with Title 75, chapter 11, part 5, MCA, or with rules, permits or orders issued pursuant to Title 75, chapter 11, part 5, MCA;

(b) the permittee committed fraud or deceit in applying for the operating permit; or

(c) the operating permit was issued in error.

(7) Except as provided in (8), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

(8) If the department determines that noncompliance with Title 75, chapter

11, part 5, MCA, or the rules adopted thereunder poses an immediate or substantial threat to the public health, safety or environment, it may immediately revoke the operating permit and tag. A permittee whose operating permit and tag have been revoked in accordance with this rule may request a hearing before the department. The department shall schedule a hearing within 10 days of the request for hearing.

(9) For the first 45 days after an operating permit expires, an UST is considered not operating if no regulated substance is deposited into or dispensed from the system.

#### 17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS

(1) The owner or operator of an underground storage tank system shall have all active underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder.

(a) The inspection must include examination, assessment and documentation of compliance with all tank operation and maintenance requirements under 75-11-509, MCA, and rules adopted thereunder. The aforementioned "operation and maintenance requirements" are those requirements in ARM Title 17, chapter 56, subchapters 2, 3 and 4 that address the following categories:

- (i) release prevention and detection;
- (ii) spill and overfill prevention;
- (iii) corrosion protection; and
- (iv) testing, monitoring, and recordkeeping related to (1)(a)(i) through (iii).

(b) Underground storage tank systems that, under ARM 17.56.102(3) are exempt from ARM Title 17, chapter 56, subchapters 2, 3 and 4, are exempt from compliance inspection requirements. Owners or operators of these underground storage tank systems may obtain an operating permit and tag by making a written request to the department and providing evidence, satisfactory to the department, that the subject UST systems qualify for this exemption.

(2) For an underground storage tank system that is installed before November 1, 2001, an initial inspection must occur no later than January 1, 2002. Subsequent inspections must be completed at least 90 days before the expiration date of the operating permit issued pursuant to ARM 17.56.308.

(3) For an underground storage tank system that is installed or returned to active status pursuant to ARM 17.56.701 after November 1, 2001, an initial inspection must be completed at least 90 days, but no more than 120 days, after the date the conditional operating permit is issued. If the facility has other underground storage tank systems installed prior to November 1, 2001, all subsequent inspections of an underground storage tank system installed on or after November 1, 2001, must be conducted on the same schedule as the underground storage tank systems in existence prior to that date.

(4) Upon completion of the inspection, the inspector shall provide the

owner or operator with a copy of the inspection report.

(5) No later than 15 days after any inspection conducted pursuant to this rule, the owner or operator, or the compliance inspector, shall provide to the department the results of the compliance inspection on a form approved by the department. The form must be signed by the licensed compliance inspector and the underground storage tank system owner or operator.

(6) All underground storage tank systems at an individual facility, except as provided in (2), must be inspected at one time.

(7) The owner or operator shall correct the violations noted in a compliance inspection report either within 90 days of receipt of the inspection report by the owner or operator, or at least 14 days prior to the expiration of the facility's operating permit, whichever occurs first.

(8) The owner or operator shall submit to the department a follow-up inspection report either within 30 days after completion of the corrective actions required under (7), or at least 14 days before the expiration of the facility's operating permit, whichever occurs first.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) The department may issue a conditional operating permit when an UST system does not have an operating permit and active operation is to be resumed after the UST system has been out of use. A conditional operating permit may be issued upon the department's receipt of the test results or written notice required in ARM 17.56.701.

(3) A conditional operating permit and tag issued under (1) or (2) expires 180 days after issuance.

(4) Notwithstanding issuance of a conditional operating permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(5) The department may issue a one-time fill permit for the following purposes:

(a) testing related to installation of a new UST system. The department may issue the fill permit concurrently with an installation permit issued pursuant to subchapter 13; or

(b) testing related to returning an inactive UST system to active status. The department may issue the fill permit upon receipt of written notice, in accordance with ARM 17.56.701, that the UST will return to active operational status.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit and tag when operation of the UST is necessary to protect the safety and welfare of persons, property or national security from imminent harm or threat of harm.

(a) Before issuing an emergency operating permit, the department shall



determine that:

(i) under all the circumstances, any potential impacts to human health and the environment arising from operation of the UST are outweighed by the interest in preserving health, safety or welfare of persons, property or national security; and

(b) Emergency permits expire when the emergency is abated or 90 days after issuance of the permit, whichever time period is shorter.

(c) Notwithstanding issuance of an emergency permit, the department may pursue any enforcement measures available under Title 75, chapter 11, part 5, MCA, to address UST violations.

(d) In order to reduce the risk of a release, any emergency operating permit issued by the department under this rule may be subject to conditions or procedures that the department determines are necessary to minimize risks to human health or to the environment.

## Sub-Chapter 4 Release Detection

### 17.56.401 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS

(1) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(a) can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(b) is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) meets the performance requirements in ARM 17.56.407 or 17.56.408, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting a leak rate or quantity specified for that method in ARM 17.56.407(1)(b) through (d) or 17.56.408(1)(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(2) When a release detection method operated in accordance with the performance standards in ARM 17.56.407 and 17.56.408 indicates a release may have occurred, owners and operators must notify the department and the implementing agency in accordance with subchapter 5.

(3) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter by December 22 of the year listed in the following table below:

### SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

New tanks (after Dec. 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with ARM 17.56.402(1)(b)(i) and 17.56.403(2)(d).

RD = Must begin release detection for tanks and suction piping in accordance with ARM 17.56.402(1)(a) and (b)(ii), and 17.56.403.

(4) Farm or residential tanks of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes, heating oil tanks, and emergency power generator tanks which were installed before 1965 or for which

the date of installation is unknown, must comply with release detection requirements by December 22, 1990. Any of these types of tanks installed on or after January 1, 1965, must follow the schedule set forth in (3).

(5) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must complete the closure procedures in subchapter 7 by the date on which release detection is required for that UST system under (4).

#### 17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) tanks must be monitored at least every 30 days for releases using one of the methods listed in ARM 17.56.407(1)(d) through (h) except that:

(i) UST systems that meet the performance standards in ARM 17.56.201 or 17.56.202, and the monthly inventory control requirements in ARM 17.56.407(1)(a) or (b), may use tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under ARM 17.56.202(2), whichever is later;

(ii) UST systems that do not meet the performance standards in ARM 17.56.201 or 17.56.202 may use monthly inventory controls (conducted in accordance with ARM 17.56.407(1)(a) or (b)) and annual tank tightness testing (conducted in accordance with ARM 17.56.407(1)(c)) until December 22, 1998, when the tank must be upgraded under ARM 17.56.202 or permanently closed under ARM 17.56.702;

(iii) tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with ARM 17.56.407(1)(b)); and

(iv) farm or residential tanks of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes, a tank of 1100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored, and emergency power generator tanks with capacities of 1100 gallons or less capacity may use yearly tank gauging (conducted in accordance with ARM 17.56.407(1)(b)).

(b) underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(i) underground piping that conveys regulated substances under pressure must:

(A) be equipped with an automatic line leak detector conducted in accordance with ARM 17.56.408(1)(a); and

(B) have an annual line tightness test conducted in accordance with ARM 17.56.408(1)(b) or have monthly monitoring conducted in accordance with ARM 17.56.408(1)(c).

(ii) underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with ARM 17.56.408(1)(b), or use a monthly monitoring method

conducted in accordance with ARM 17.56.408(1)(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (A) the below-grade piping operates at less than atmospheric pressure;
- (B) the below-grade piping is closed so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (C) only one check valve is included in each suction line;
- (D) the check valve is located directly below and as close as practical to the suction pump; and
- (E) a method is provided that allows compliance with (1)(b)(ii)(B) through (D) to be readily determined.

(iii) underground piping connected to heating oil tanks with a capacity of 660 gallons or less is exempt from the requirements of (1)(b)(i) and (ii) provided that:

- (A) the new primary underground piping has secondary containment;
- (B) liquid released into the interstitial space will move not more than 20 feet before being detected in a standpipe or sump;
- (C) the interstice is visually monitored for released liquid once every 30 days; and
- (D) the test results are maintained for at least one year.

(iv) new underground piping connected to underground heating oil tanks with a capacity of 660 gallons or less shall slope back towards tanks that do not have foot valves.

**17.56.403 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS** Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(1) Release detection at existing UST systems must meet the requirements for petroleum UST systems in ARM 17.56.402. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in (2) of this rule.

(2) Release detection at new hazardous substance UST systems must meet the following requirements as provided in 40 CFR 265.193, adopted by reference in this rule:

(a) secondary containment systems must be designed, constructed and installed to:

- (i) contain regulated substances released from the tank system until they are detected and removed;
- (ii) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
- (iii) be checked for evidence of a release at least every 30 days.

(b) double-walled tanks must be designed, constructed, and installed to:

- (i) contain a release from any portion of the inner tank within the outer wall; and

- (ii) detect the failure of the inner wall.

- (c) external liners (including vaults) must be designed, constructed, and

installed to:

- (i) contain 100% of the capacity of the largest tank within its boundary;
  - (ii) prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and
  - (iii) surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- (d) underground piping must be equipped with secondary containment that satisfies the requirements of (a) above (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with ARM 17.56.408(1). The department hereby adopts and incorporates by reference 40 CFR 265.193, Containment and Detection of Releases which sets forth standards for secondary containment and detection of releases of UST systems and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

#### 17.56.407 METHODS OF RELEASE DETECTION FOR TANKS

(1) Each method of release detection for tanks used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

- (a) product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:
  - (i) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - (ii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (iii) the regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - (iv) deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - (v) product dispensing is metered and recorded within for an accuracy of six cubic inches for every five gallons of product withdrawn; and
  - (vi) the measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (b) manual tank gauging must meet the following requirements:
  - (i) tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
  - (ii) level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
  - (iii) the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (iv) a leak is suspected and subject to the requirements of subchapter 5 if

the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	10 gallons.....	5 gallons
551-1000 gallons	13 gallons.....	7 gallons
1001-2000 gallons	26 gallons.....	13 gallons

(v) tanks of 550 gallons or less nominal capacity may use this method as the sole method of release detection. Tanks of 551 to 2000 gallons may use the method in place of manual inventory control in (1)(a). Tanks of greater than 2000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

(vi) tanks listed in ARM 17.56.402(1)(a)(iv) may use this method of release detection as the sole method of annual tank tightness testing.

(c) tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(i) the automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(ii) inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (1)(a).

(e) testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(i) the materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(ii) the stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(iii) the measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(iv) the level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(v) the vapor monitors are designed and operated to detect any significant

increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(vi) in the UST excavation zone, the site is assessed to ensure compliance with the requirements in (1)(e)(i) through (iv) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(vii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(f) testing or monitoring for liquids on the ground water must meet the following requirements:

(i) the regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(iii) the slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground water conditions, as well as all conditions between the high and low ground water conditions;

(iv) monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) the continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(vii) within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in (1)(f)(i) through

(v) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

(viii) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(ix) monitoring wells must be accessible for the sampling purposes of ARM 17.56.503.

(g) interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(i) for double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

(ii) for UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(A) the secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least <sup>-6</sup> 10<sup>-6</sup> cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(B) the barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) for cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(D) the ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(E) the site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(F) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(iii) for tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) any other type of release detection method, or combination of methods, can be used if it can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

#### 17.56.408 METHODS OF RELEASE DETECTION FOR PIPING

(1) Each method of release detection for piping used to meet the requirements of ARM 17.56.402 must be conducted in accordance with the following:

(a) Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(b) A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at 1 1/2 times the operating pressure.

(c) Any of the methods in ARM 17.56.407(1)(e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

#### 17.56.409 RELEASE DETECTION RECORDKEEPING (1) All UST



system owners and operators must maintain records in accordance with ARM 17.56.305 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:

- (a) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the operating life of the release detection system;

- (b) the results of any sampling, testing, or monitoring must be maintained for at least one year, except that the results of tank tightness testing conducted in accordance with ARM 17.56.407(1)(c) must be retained until the next test is conducted; and

- (c) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for the operating life of the release detection system.

## Sub-Chapter 5 Release Reporting, Investigation, and Confirmation

17.56.501 GENERAL (1) Except as otherwise provided in this subchapter, owners and operators of UST systems must comply with the requirements of this subchapter. Owners and operators of PSTs seeking reimbursement from the Montana petroleum tank release cleanup fund must comply with the requirements of this subchapter.

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the remediation division of the department and the implementing agency or to the 24-hour disaster and emergency services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

- (a) visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or ground water, or the presence of free product or vapors in basements, sewer or utility lines;
- (b) the sudden or unexplained loss of product from the tank system;
- (c) a failed tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking and is immediately repaired or replaced;
- (d) sampling, testing or monitoring results from a release detection method, performed in accordance with subchapter 4, that indicate a release may have occurred, unless the release detection or monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling or testing indicates that the system is not leaking;
- (e) the presence of product in the tank secondary containment system;
- (f) erratic behavior of product dispensing equipment or automatic release detection equipment unless the equipment is found to be defective but not leaking, and is immediately repaired or replaced;
- (g) an unexplained presence of water in the tank or in the interstitial space between the tank and the tank secondary containment;
- (h) inconclusive results from a tank tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking;
- (i) sampling, testing or monitoring results from a release detection method, required under subchapter 4, that are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated or replaced, and subsequent monitoring, sampling or testing indicates that the system is not leaking; and

(j) analytical results from contaminated soils that exceed 50 milligrams per kilogram for extractable petroleum hydrocarbons (EPH).

(2) Messages left on answering machines, received by facsimile, email, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

17.56.503 INVESTIGATION DUE TO OFF-SITE IMPACTS (1) When required by the department based upon a suspected release, an owner and operator must follow the procedures in ARM 17.56.504 to determine if the system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the department or the implementing agency or brought to its attention by another person.

17.56.504 RELEASE INVESTIGATION AND CONFIRMATION STEPS

(1) Unless corrective action is initiated in accordance with subchapter 6, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under ARM 17.56.502, within seven days of the discovery of the condition identified in ARM 17.56.502, using either of the following steps, unless both are required by the language of this rule:

(a) Owners and operators must conduct tests (according to the requirements for tightness testing in ARM 17.56.407 and 17.56.408) that determine whether a leak exists in any portion of the tank that routinely contains product, or the attached delivery piping, or both.

(i) owners and operators must immediately repair, replace or upgrade the PST or UST system, and begin corrective action in accordance with subchapter 6 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(ii) further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(iii) owners and operators must conduct a site check as described in (1)(b) if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Owners and operators must measure for the presence of a release where contamination is most likely to be present at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release. The department should be consulted to assist in determining sample types, sample locations, and measurement methods. Owners and operators of PST sites and owners and operators of UST sites should refer to the Montana Quality

Assurance Plan for Investigation of Underground Storage Tank Releases as a guide in the collection, preservation and analysis of field samples;

(i) if the test results for the excavation zone or the PST or UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subchapter 6;

(ii) if the test results for the excavation zone or the PST or UST site are taken according to (1)(b) and do not indicate that a release has occurred, further investigation is not required if approved by the department; and

(iii) the department may reject all or part of the test results, if it has reasonable doubt as to the quality of data or if the sample or test methods are scientifically unsound. In such cases, the department may require resampling, reanalysis, or both. The department will provide the owner or operator with an explanation of its decision to reject any test results.

#### 17.56.505 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS

(1) Owners and operators must contain and immediately clean up a spill or overfill, immediately report the spill or overfill to the department and the implementing agency pursuant to (3) or by another method that ensures that a person within the remediation division of the department receives notice within 24 hours of the release, and must begin corrective action in accordance with subchapter 6 in the following cases:

(a) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(b) spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR Part 302.

(2) Owners and operators must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department and the implementing agency.

(3) Telephone notification required in (1) or (2) must be made to a person in the remediation division of the department or to the 24-hour disaster and emergency services duty officer at (406) 841-3911. Messages left on answering machines, received by facsimile, email, voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the

implementing agency within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within the remediation division of the department, the implementing agency, or the 24-hour disaster and emergency services duty officer available at telephone number (406) 841-3911 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, email or voice mail or other messaging device are not adequate 24-hour notice. For further assistance, the department's release reporting hotline may be reached at 1 (800) 457-0568.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department and implementing agency by a method that ensures the department or the implementing agency receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil at UST sites, published in Table 1 of Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;

(ii) preliminary remediation goals or soil screening levels published in the United States Environmental Protection Agency, Region 9 Preliminary Remediation Goals for soil analyses of contaminants in soil that are not listed in RBCA; or

(iii) contaminant levels in water that exceed background levels in the receiving water.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular WQB-7, "Montana Numeric Water Quality Standards" (January 2004);

(b) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) (October 2003);

(c) U.S. Environmental Protection Agency, "Region 9 Preliminary Remediation Goals" (February 10, 2003); and

(d) Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) published at 40 CFR Part 302 (2001).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

Sub-Chapter 6  
Release Response and Corrective Action for Tanks  
Containing Petroleum or Hazardous Substances

17.56.601 GENERAL (1) Except as otherwise provided in this rule, owners and operators of UST systems must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. Owners or operators of PSTs seeking reimbursement from the Montana petroleum tank release cleanup fund, must, in response to a confirmed release from a tank or system, comply with the requirements of this subchapter. This subchapter does not apply to USTs excluded under ARM 17.56.102(2) and (4) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

(2) If corrective action, initial response and abatement, initial site history, remedial investigation, preparation of remedial investigation and cleanup plans, or cleanup or any of them are conducted by:

(a) the department through a response action contractor employed by the department, this subchapter governs only to the extent it is not inconsistent with the master contract and task order agreed to between the contractor and the department.

(b) the owner or operator of the PST or UST system, whether with or without a response action contractor, this subchapter governs only to the extent it is not inconsistent with any order issued by a court, the department or the implementing agency or any corrective action plan approved by the department.

17.56.602 INITIAL RESPONSE AND ABATEMENT MEASURES

(1) Upon confirmation of a release in accordance with ARM 17.56.504 or after a release from the PST or UST system is identified in any other manner, owners and operators must:

(a) perform the following initial response actions:

(i) report the release to the department in accordance with ARM 17.56.506;

(ii) take immediate action to prevent any further release of the regulated substance into the environment; and

(iii) identify and mitigate fire, explosion, and vapor hazards.

(b) perform the following initial abatement measures:

(i) remove as much of the regulated substance from the PST or UST system as is necessary to prevent further release into the environment;

(ii) visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;

(iii) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone or the PST and entered into subsurface structures (such as sewers or basements). Vapor concentrations measured as gasoline in surface or subsurface structures (basements, buildings, utility conduits) must be reduced to

a level below the action levels established by the department. A combustible gas indicator should be used to determine explosive levels measured from the lowest point in a structure. To determine health-based vapor levels, air samples should be collected from the breathing space approximately four feet above the floor. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be consulted for appropriate sampling and analytical methods for collection of air samples. The following action levels for gasoline vapors are established by the department:

(A) action level to guard against explosion or fire is 10% of the lower explosive limit of gasoline, (1300 parts per million (ppm));

(B) action level to protect the health of individuals exposed in affected structures eight hours per day, five days per week is 30 ppm; and

(C) action level to protect the health of individuals in affected structures with full-time occupancy is seven ppm. If any action level is exceeded, immediate action must be taken by the owners and operators to reduce concentrations to below the above-specified action level. Monitoring and mitigation must continue for as long as they are necessary as indicated by the remedial investigation and these action levels.

(iv) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or cleanup activities. If these remedies include treatment or disposal of soils, owners and operators must comply with applicable state and local requirements. Soils heavily contaminated with leaded gasoline, waste oil, solvents, or hazardous substances must be tested for the presence of hazardous wastes. Treatment or disposal of all soils containing hazardous wastes must be approved by the department.

(v) determine the extent and magnitude of contamination in soils, ground water, surface water or both, which contamination has resulted from the release at the PST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release. Samples must be collected and analyzed in accordance with ARM 17.56.504(1)(b); and

(vi) investigate surface water and ground water to determine if existing drinking water sources have been adversely impacted by the release. If so, immediately provide an alternate supply of safe drinking water to the impacted persons, residences or businesses.

(c) Investigate to determine the possible presence of free product, begin free product removal as soon as practicable, and:

(i) conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;

(ii) use abatement of free product migration as a minimum objective for the design of the free product removal system; and

(iii) handle any flammable products in a safe and competent manner to prevent fires or explosions in accordance with local and state fire codes.

(d) Within 30 days after release confirmation, submit a report to the department on a form designated by the department summarizing the initial response and abatement measures taken under (1)(a) through (c) and any resulting information or data. The report must include data on the nature, estimated quantity and source of the release. If initial response and abatement measures extend beyond the 30-day time period, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department. If free product is removed, the following information must also be provided in or with the report:

(i) the name of the person(s) responsible for implementing the free product removal measures;

(ii) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(iii) the type of free product recovery system used;

(iv) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(v) the type of treatment applied to, and the effluent quality expected from, any discharge to sanitary sewers, surface water, ground water or atmosphere and a copy of any current state or federal discharge permit;

(vi) the steps that have been or are being taken to obtain necessary permits for any discharge; and

(vii) the disposition of the recovered free product.

**17.56.603 INITIAL SITE HISTORY** (1) Unless directed to do otherwise by the department, owners and operators must assemble and provide to the department information about a site where a release has been confirmed which must include, but is not necessarily limited to the following:

(a) A legal description of the real property at which the release occurred;

(b) A history of the ownership and operation of the PST or UST from which the release occurred, since at least the time at which the release from the tank did or could have occurred at the site, including the following:

(i) the name, current address and telephone number of all current owners and operators;

(ii) the name, current address and telephone number (if known) of all past owners and operators;

(iii) the years of current and past ownership and/or operation;

(iv) a description of the activities conducted at the site by each current and past owner/operator; and

(v) a general construction history of site.

(c) A map or maps and descriptions or symbols appropriate in scale and scope showing the following within a 500 foot (unless otherwise noted) radius of the site:

(i) adjacent and nearby buildings;

(ii) owner/operator each building;



- (iii) paved (concrete or asphalt) areas;
- (iv) property line defining the site;
- (v) location of above and underground tanks and associated lines, pumps, and dispensers;
- (vi) location of former tanks on property;
- (vii) soil boring locations (if done);
- (viii) monitoring well locations (if done);
- (ix) underground utilities on and adjacent to the property (sewer, water, telephone, electric);
- (x) basements and tile drain and sump systems on and adjacent to the property;
- (xi) street maps or named/numbered streets;
- (xii) all wells and springs within a 1/2 mile radius of the site;
- (xiii) water bodies (rivers, ponds, lakes, and irrigation diversion) within a 1/2 mile radius of the site;
- (xiv) surface elevation of the site of the release as taken from surveys, topographic maps of city; and
- (xv) north arrow and map legend (scale, such as 1 inch = 100 feet).
- (d) The following information concerning the PST or UST systems on the property:
  - (i) date of installation of all the tank or tanks on the site;
  - (ii) dates of installation and removal of all tanks previously located on the site;
  - (iii) size of all tanks on site (diameter, length, gallons);
  - (iv) tank construction material of all tanks on site;
  - (v) present contents of all tanks on site;
  - (vi) previous contents of all tanks on site;
  - (vii) type and locations of product pumps, piping, and dispensers;
  - (viii) method and results of product inventory reconciliation (describe and attach copies of product inventory charts);
  - (ix) corrosion protection on tanks and lines (yes/no and description);
  - (x) type and location of leak detectors;
  - (xi) type of fill under and around tanks and lines (clay, sand, or other material); and
  - (xii) type of tank anchors (if any).
- (e) description of all leaks, spills, overfills or other releases from the PST or UST systems located on the site:
  - (i) date of release;
  - (ii) date release was reported to the department and to the implementing agency;
  - (iii) product released;
  - (iv) quantity lost;
  - (v) quantity recovered;
  - (vi) location on site;
  - (vii) cleanup action taken; and
  - (viii) offsite effects.

(f) Any tank or line test dates, methods used for conducting the tests, tester's name, address, and phone number, and results of the test (include data and worksheets or calculations).

(g) If the PST or UST system (tanks and lines) or any part of it has been removed from the ground, provide a description of the condition of it by answering the following questions and providing the other information called for below:

- (i) Was corrosion present?
- (ii) Was there a visible leak?
- (iii) Were there any loose fittings?
- (iv) Was the tank/line carefully examined for signs of leakage?
- (v) Was an independent observer (fire marshal, city official, testing laboratory employee, etc. but not your employee) present when tank(s) were removed?
  - (A) name of the independent observer;
  - (B) organization;
  - (C) address; and
  - (D) telephone.
- (vi) Provide pictures of removed tanks and lines if pictures are available;
- (vii) State the disposition of tank(s) (who took it, where was it disposed);
- (viii) Provide a description of soil conditions in the area of the tank and line excavation, with an estimate of the volumes:
  - (A) odors present and method of measurement;
  - (B) visible product in soil;
  - (C) sheen on water mixed with soil;
  - (D) sheen on groundwater in excavation;
  - (E) product on groundwater in excavation;
  - (F) soil sampling descriptions; and
  - (G) instrument reading (if available).
- (ix) State the disposition of the soil removed during the excavation or at any other time after the release.
- (h) Copies of all reports previously completed, such as reports on soil, groundwater, or other reports pertinent to the site.

(2) Within 30 days of release confirmation, owners and operators must submit the information collected in compliance with (1) of this rule to the department in a manner that demonstrates its applicability and technical adequacy. Owners and operators must provide an explanation to the department regarding any information requested in (1) of this rule that cannot be obtained.

**17.56.604 REMEDIAL INVESTIGATION** (1) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of free and dissolved product contamination in the surface water and in ground water, owners and operators must conduct a remedial investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(a) there is evidence that ground water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(b) free product is found to need recovery in compliance with ARM 17.56.602(1)(c);

(c) there is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures required under ARM 17.56.602); or

(d) the department or the implementing agency requests a remedial investigation, based on the known or potential effects of contaminated soil or ground water on nearby surface water, ground water, and human health.

(2) After reviewing information required under ARM 17.56.602 and 17.56.603, the department may determine that no additional investigation or corrective action is necessary; however, the department may require the owners and operators to initiate and continue compliance monitoring as determined by the department.

(3) A remedial investigation generally is an expanded site assessment more detailed in scope than the initial response and abatement measures under ARM 17.56.602, which must define the nature, extent, and magnitude of contamination and identify threats to public health, welfare and to the environment. A remedial investigation work plan must be submitted to the department prior to implementation by the owners and operators. The department shall submit a copy of a work plan from any owner or operator who is or may be seeking reimbursement to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government. The following information is required to complete the remedial investigation:

(a) site map(s) showing all sampling locations, including the site(s) of:

(i) borings;

(ii) monitoring wells;

(iii) recovery wells;

(iv) vapor survey points; and

(v) sites where any other samples were taken.

(b) soil and bedrock technical information and map(s), including:

(i) soil type, thickness, and classification below the site of the release;

(ii) unconsolidated material and bedrock type, thickness, and formation name below the site of the release;

(iii) boring logs and monitoring well logs (description of well, well construction methods, sediment odors, and blow count);

(iv) soil characteristics (grain size, sorting, origin, texture, permeability, classification);

(v) observed contamination (visual, odors, and vapor survey results); and

(vi) laboratory analytical results.

(c) ground water technical information and map(s), including:

(i) general description and characteristics of aquifers and unsaturated

zone below the site of the release, including:

- (A) hydraulic characteristics;
  - (B) depth to water table;
  - (C) surveyed water elevations and contours (potentiometric surface);
  - (D) direction of ground water flow;
  - (E) rate of ground water flow;
  - (F) perched conditions; and
  - (G) connections to other aquifers.
- (ii) location, ownership, use and construction of all municipal, domestic, irrigation, industrial and monitoring wells within ½ mile of the site;
- (iii) sampling description;
- (iv) results of laboratory analysis.
- (d) surface water technical information and map(s), including:
- (i) location and use of all surface water within one mile of site;
  - (ii) ground water/surface water discharge points;
  - (iii) sampling description; and
  - (iv) results of laboratory analysis.
- (e) description of and map(s) showing the extent of free product and vapors discovered, whether as a result of current or past vapors/seepage, in basements and other subsurface structures and utilities. The description must include a copy of the vapor survey.
- (f) technical conclusions, which must be stated with reasonable professional certainty and under the standard of care applicable, must include at least:
- (i) source of the release;
  - (ii) current extent of and potential for the release (determined with field or laboratory analytical detection equipment) in or through the following media:
    - (A) soil; lateral and vertical extent of fuel-soaked soil;
    - (B) free product; aerial extent;
    - (C) water; dissolved phase (water soluble constituents);
    - (D) vapor;
  - (g) sampling summary charts, which clearly identify by the date on which the samples were taken, all of the following: sample ID#, sampling location, sample type, date analyzed, laboratory conducting the analysis, analytical method, and results of the analysis.
  - (h) laboratory report sheets.
- (4) If a remedial investigation has been conducted, owners and operators must submit a report containing the information collected under (3) within 120 days of release confirmation. If investigation extends beyond the time for submission of the report, owners and operators must also submit an additional follow-up completion report according to a schedule established by the department.

17.56.605 CLEANUP PLAN (1) At any time after reviewing the information submitted pursuant to ARM 17.56.602, 17.56.603, and/or 17.56.604, the department may require owners and operators to submit additional information or

to develop and submit a cleanup plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators may, after fulfilling the requirements of ARM 17.56.602 through 17.56.604, choose to submit a cleanup plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health, safety, and the environment as determined by the department, and must modify their plan as necessary to meet this standard.

(2) In order to prepare the cleanup plan, owners and operators must properly evaluate and interpret the field and analytical results of the site or remedial investigation to define the extent and magnitude of free product, adsorbed phase product, dissolved phase plume and vapor phase product.

(3) The owners and operators must screen and select cleanup alternatives to develop a matrix evaluation of cleanup alternatives which considers cost, performance, reliability, implementation, safety and effects on public health, and the environment. Information on all cleanup alternatives, with an explanation of why any alternative was selected, must be included in the cleanup plan. Cleanup alternatives may include, but are not limited to the following types of action:

- (a) take no further action;
- (b) excavate the contaminated soil and/or treat and/or dispose of the same;
- (c) in-place soil treatment;
- (d) product recovery;
- (e) groundwater removal and treatment;
- (f) groundwater gradient control (hydrodynamic);
- (g) vapor control measures;
- (h) enhanced biodegradation;
- (i) drinking water supply replacement; and
- (j) relocation of affected residences and/or businesses.

(4) Upon receipt of a cleanup plan from any owner or operator who is or may be seeking reimbursement, the department shall submit a copy of the plan to the appropriate local government office with jurisdiction over corrective action of the release. The office shall respond with any comments within 15 days of receipt of the plan and the department shall approve or disapprove the plan within 15 days of receipt from the local government.

(5) The department will approve the cleanup plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department must consider the following factors as appropriate:

- (a) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (b) The hydrogeologic characteristics of the facility and the surrounding area;
- (c) The proximity, quality, and current and future uses of nearby surface water and groundwater;

(d) The potential effects of residual contamination on nearby surface water and groundwater;

(e) An exposure assessment that identifies routes by which receptors may be exposed to contaminants and estimates contaminant concentrations to which receptors may be exposed; and

(f) Any information assembled in compliance with this subchapter.

(6) Within 30 days of department approval of the cleanup plan or as directed by the department, owners and operators must implement the plan, including any modifications made by the department to the plan. Owners and operators must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department. During implementation of the cleanup plan, a status letter shall be submitted quarterly to the department and to the implementing agency. The cleanup plan must contain a plan and schedule for compliance monitoring to evaluate the effectiveness of cleanup activities. Compliance monitoring must continue for a period of at least 2 years after completion of cleanup activities specified in the cleanup plan, or another reasonable time period approved by the department. Results of compliance monitoring will be evaluated by the department on a site-specific basis and compared to cleanup goals that should be outlined in the cleanup plan. Final completion of cleanup activities and compliance monitoring must be approved by the department.

(7) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the cleanup plan is approved provided that they:

(a) Notify the department and the implementing agency of their intention to begin cleanup;

(b) Comply with any conditions imposed by the department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(c) Incorporate these self-initiated cleanup measures in the cleanup plan that is submitted to the department for approval.

(8) As part of corrective action, owners and operators must conduct restoration activities as soon as the completion of any part of the cleanup plan will allow. Restoration activities must include:

(a) restoring utility services disrupted as a result of investigative or corrective action activities;

(b) properly abandon or reclaim recovery and monitoring systems, including any wells, in accordance with state law or rules, after recovery and monitoring operations are terminated. Proper abandonment and reclamation includes reclamation of recovery culverts, infiltration galleries, electrical systems, and plumbing systems, and landscaping necessary to restore any disturbed property to its pre-corrective action state.

17.56.606 PUBLIC PARTICIPATION (1) For each confirmed release that requires a cleanup plan under ARM 17.56.605, the department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned cleanup activities. This notice

may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts by field staff.

(2) The department must ensure that site release information and decisions concerning the cleanup plan are made available to the public for inspection upon request.

(3) Before approving a cleanup plan, the department may hold a public meeting to consider comments on the proposed cleanup plan if there is sufficient public interest, or for any other reason.

(4) The department must give public notice that complies with (1) if implementation of an approved cleanup plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department.

17.56.607 RELEASE CATEGORIZATION (1) The department shall categorize all releases from USTs and PSTs regulated under this chapter as active, transferred, resolved, or ground water management releases.

(2) Releases that do not meet the criteria set forth in (3), (4), or (7) must be categorized as active.

(3) The department may categorize a release as transferred if another state or federal program assumes jurisdiction over the facility and all releases and threatened releases of hazardous or deleterious substances from USTs or PSTs regulated under this chapter are to be addressed by that program at the facility. The department shall notify the owner or operator before categorizing the release as transferred. The notice must state which state or federal program has jurisdiction over the release.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) documented investigations, conducted in accordance with ARM 17.56.604, identify the extent or absence of contamination in the soil, ground water, surface water, and other environmental media relevant to the release;

(b) risks to human health, safety and the environment from residual contamination at the site have been elevated using methods listed in (4)(b)(i) or

(ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed  $1 \times 10^{-5}$ , to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) Montana Tier 1 Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or

(ii) a site-specific risk assessment method approved by the department for evaluation of risks to human health, safety and the environment associated with contamination, or likely contamination, of surface water or aquatic sediments, or for evaluation of risks associated with contaminant vapors, that demonstrates to the department's satisfaction that current and potential future exposure pathways are incomplete;

(c) all appropriate corrective actions associated with the release and required by the department, including compliance monitoring and confirmatory sampling, have been completed;

(d) all free product has been removed to the maximum extent practicable; and

(e) all applicable environmental laws associated with the release have been met. These applicable requirements may include, but are not limited to, air quality, drinking water and monitoring well requirements, solid waste management requirements, hazardous waste management requirements, national pollutant discharge elimination system (NPDES) and Montana pollutant discharge elimination system (MPDES) requirements, underground injection controls and standards, UST requirements, noxious weed control, ground water and surface water quality standards, nondegradation requirements, storm water requirements, and requirements for the protection of endangered species, historic sites, wetlands and floodplains.

(5) The department may recategorize a resolved release as active if the department receives information with which it determines that further corrective action is necessary. Such information may include, but is not limited to, changes in land use or site conditions that may increase the potential for adverse impacts to human health, safety or to the environment from residual contamination. The department shall notify the owner or operator of the department's determination to recategorize a resolved release as active.

(6) If a release is categorized as resolved, the department shall send a letter to the owner or operator that:

(a) states that, based on information available, no further corrective action will be required at that time;

(b) requires that all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the owner or operator in accordance with applicable rules and requirements;

(c) describes the nature, extent, concentration, and location of any residual contamination;

(d) states the reasons why the department believes the release does not pose a present or future risk to human health, safety or to the environment; and

(e) states that the department reserves the right to conduct or to require further corrective action if a new release occurs or if the department receives new or different information related to the release.

(7) The department may categorize a release as ground water management if:

(a) site conditions satisfy all criteria listed under (4)(a) and (d);

(b) risk evaluations conducted in accordance with (4)(b) demonstrate that



there are no unacceptable risks to human health, safety, ecological receptors, surface water, or aquatic sediments from exposure or likely exposure to contamination;

(c) all cleanup actions required by the department have been completed except for continued monitoring required under (8);

(d) ground water quality parameters exceed:

(i) a water quality standard or nondegradation requirement;

(ii) a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141; or

(iii) a risk-based screening level published in RBCA;

(e) ground water performance monitoring and natural attenuation data collected in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P indicate that the extent, magnitude, and concentration of the dissolved contaminant plume have been stable or decreasing under fluctuating hydrogeologic conditions for a period of monitoring, not less than five years, which is determined by the department to be sufficient to detect unacceptable risks to human health, safety or to the environment;

(f) the source area contamination has been eliminated, controlled, or reduced to the maximum extent practicable, in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, and any remaining source area contamination presents a low long-term threat to human health, safety or to the environment;

(g) documented investigations demonstrate that taking additional or different cleanup action is not feasible and will not meet site corrective action objectives within a reasonable timeframe as compared to monitored natural attenuation; and

(h) institutional controls are in place to ensure that identified risks to human health and safety are reduced to acceptable levels. For the purposes of this rule, institutional controls must consist of:

(i) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(ii) a designated controlled ground water area as provided for in 85-2-506, MCA;

(iii) environmental control easements created and approved in accordance with 76-7-101 through 76-7-213, MCA; or

(iv) another method approved by the department that has been shown to ensure that risk to human health has been reduced to acceptable levels.

(8) If the department categorizes a release as ground water management, the owner or operator shall monitor ground water in accordance with a monitoring program developed for the site and approved by the department.

(a) The monitoring program must specify the location, frequency, and type of sampling required to evaluate site conditions and confirm that residual contamination at the site is either decreasing in extent and concentration or remaining stable.

(b) The frequency of monitoring must not be less often than one

monitoring event every three years.

(c) Monitoring must continue until the corrective action objectives for the site are achieved and the release may be categorized as resolved in accordance with (4).

(d) In developing a ground water monitoring program, the department shall consider:

- (i) the nature, extent, and concentration of the contaminant plume;
- (ii) the locations of human health and environmental receptors relative to the predicted migration path of the plume;
- (iii) historical or reasonably anticipated land use in the area; and
- (iv) any other factors that the department determines may affect the risk from residual contamination to human health, safety, or the environment.

(9) If the department categorizes a release as ground water management, the department shall send a letter to the owner or operator that:

- (a) states that contamination from the release will be addressed by monitored natural attenuation;
- (b) contains the information in (6)(b), (c) and (e);
- (c) states the reasons why the department believes that the release does not pose an unacceptable present or future risk to human health, safety, or ecological receptors;
- (d) includes a monitoring program that complies with (8);
- (e) includes a schedule for review of any institutional controls;
- (f) states that the release is not categorized as resolved and documents all conditions that preclude the site from being categorized as resolved; and
- (g) states that the department may require further remedial investigation or corrective action to determine whether the requirements in (4) are met if the owner, operator or department proposes to recategorize the release as resolved.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

- (a) Department Circular WQB-7, "Montana Numeric Water Quality Standards" (January 2004);
- (b) Drinking Water Maximum Contaminant Levels published at 40 CFR Part 141 (2001);
- (c) Montana Tier 1 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) (October 2003); and
- (d) U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P, "Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites" (April 1999).

(2) All references in this subchapter to the documents incorporated by reference in this rule are to the edition specified in this rule.

(3) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, Remediation Division, P.O. Box 200901, Helena, MT 59620-0901.

Sub-Chapter 7  
Out-of-Service UST Systems and Closure

17.56.701 INACTIVE UST SYSTEMS (1) When the status of an active UST system is changed to inactive, owners and operators shall notify the department, in writing, within 10 days after the date the UST ceases to be used for dispensing, depositing or storing regulated substances, shall continue operation and maintenance of corrosion protection in accordance with ARM 17.56.302, and shall continue operation and maintenance of any release detection in accordance with subchapter 4. Subchapters 5 and 6 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remains in the system.

(2) When an UST system is inactive or out of service for three months or more, owners and operators shall also:

- (a) empty the UST system;
- (b) leave vent lines open and functioning; and
- (c) cap and secure all other lines, pumps, manways, and ancillary equipment.

(3) Out of service UST system components that do not meet the corrosion protection requirements of ARM 17.56.201 or 17.56.202 must, within 12 months of being taken out of service or, in the case of a found tank, within 12 months of its discovery, be:

- (a) permanently closed in accordance with ARM 17.56.702 through 17.56.706, or
- (b) brought into compliance with ARM Title 17, chapter 56, subchapter 2.

(4) In order to return an inactive UST to active status, owners and operators, in addition to complying with all applicable UST requirements under this subchapter, shall:

(a) when an UST has a valid operating permit and is inactive for 12 months or less, provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status;

(b) when an UST has a valid operating permit and is inactive for more than 12 months:

- (i) provide the department with 30 days advance written notice of the owner or operator's intent to return the UST to active status; and
- (ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit all test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408;

(c) when an UST does not have a valid operating permit, but no more than

12 months have passed since the expiration date of the last operating permit issued for the UST:

- (i) provide the department with advance written notice as required in (4)(b)(i); and
  - (ii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;
- (d) when an UST does not have a valid operating permit, and more than 12 months have passed since the expiration date of the last operating permit issued for the UST:

- (i) provide the department with advance written notice as required in (4)(b)(i);
  - (ii) perform a precision tank tightness test, line tightness tests and functionality tests of all mechanical and electronic release detection equipment, and submit test results to the department. The owner and operator may return the UST to active status only upon receipt of notice from the department indicating that the test results are satisfactory. All tests must be conducted in accordance with accepted industry standards and must meet the performance requirements in ARM 17.56.407 and 17.56.408; and
  - (iii) obtain a conditional operating permit in accordance with ARM 17.56.310 and a compliance inspection in accordance with ARM 17.56.309;
- (e) when an UST does not have a valid operating permit, continuous operation and maintenance of corrosion protection in accordance with ARM 17.56.302 cannot be demonstrated, and more than three years have passed since the expiration date of the last operating permit issued for the UST:
- (i) meet all the requirements in (4)(d)(i) through (4)(d)(iii); and
  - (ii) show that the UST is structurally sound based upon an internal inspection.

#### 17.56.702 PERMANENT CLOSURE AND CHANGES-IN-SERVICE

(1) At least 30 days before beginning either permanent closure or a change-in-service under (2) and (3), owners and operators must notify the department and the implementing agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action already notified to the department under subchapter 6. The required assessment of the excavation zone under ARM 17.56.703 must be performed after notifying the department and the implementing agency but before completion of the permanent closure or a change-in-service.

(2) To permanently close a tank or connected piping or both, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks, connected piping, or both, taken out of service permanently must also be either removed from the ground or, when approved by the department, filled with an inert solid material.

(3) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the UST system by removing all liquid, accumulated sludge and all combustible and flammable vapors and conduct a

site assessment in accordance with ARM 17.56.703.

(4) The following cleaning and closure procedures adopted by reference in (5) must be used to comply with this rule:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard \* \* \* Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

(5) The department hereby adopts and incorporates by reference:

(a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks" which sets forth closure practices for UST systems and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks" which sets forth cleaning standards for UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375;

(c) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section which sets forth entrance standards for UST tanks and a copy of which may be obtained from API Publications Department, 1220 L Street NW, Washington, DC 20005, (202) 682-8375; and

(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard \* \* \* Working in Confined Space" which sets forth standards for working inside an UST tank and a copy of which may be obtained from Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238.

17.56.703 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE

(1) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. When measuring for the presence of a release, owners and operators must:

(a) Collect soil samples, as soon as possible after the tank, piping, or both have been removed, at the base of the tank excavation and piping trench at suspected worst-case locations, which locations may include:

(i) areas around the tank and piping that record the highest concentrations of hydrocarbon vapor recorded with vapor monitoring instruments;

(ii) areas around the tank and piping that look stained or discolored;

(iii) the lowest point of the tank;  
(iv) where the tank meets the piping; and  
(v) beneath the fill lines. For tank removal, at least two soil samples, one from either end of the tank or at suspected worst-case locations, shall be taken at least one to two feet below the base of the maximum excavation depth for each tank over 600 gallons being closed. One soil sample shall be collected beneath tanks with a capacity of 600 gallons or less. If contaminated soil is removed from the excavation site, at least one composite sample of the contaminated soil shall be collected for analysis. For piping removal, soil samples shall be collected every 20 feet at the base of the piping trench, and at suspected worst-case locations. Up to five piping trench samples may be composited.

(b) If ground water is encountered in the tank excavation, the presence of free product should be measured and a sample of the water collected for analysis.

(c) In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, type of backfill, depth to ground water, and other factors appropriate for identifying the presence of a release. The department and the implementing agency should be consulted to assist in determining sample types, sample locations, and measurement methods. The Montana Quality Assurance Plan for Investigation of Underground Storage Tank Releases should be used as a guide for the collection, preservation and analysis of field samples.

(d) Field hydrocarbon vapor analyzers can be used as screening tools to determine the presence of a release and to assist in determining the extent of contaminated soil to be removed. These analyzers, however, should not be used to confirm the absence of soil or water contamination. Only laboratory analysis of samples will be accepted by the department to confirm the absence of soil or water contamination.

(2) If sampling indicates contaminated soils, contaminated ground water, or if free product as a liquid or vapor is discovered under (1), or by any other manner, owners and operators must begin corrective action in accordance with subchapter 6. A release must be reported to the department and to the implementing agency by the owner or operator within 24 hours.

#### 17.56.704 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS

(1) When directed by the department, the owner and operator of a permanently closed UST system must access the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

17.56.705 CLOSURE RECORDS (1) Owners and operators must maintain records in accordance with ARM 17.56.305 that are capable of demonstrating compliance with closure requirements under this subchapter. Results of the excavation zone assessment required in ARM 17.56.703 must be maintained for at least three years after completion of permanent closure or

change-in-service in one of the following ways:

- (a) by the owners and operators who took the UST system out of service;
- (b) by the current owners and operators of the UST system site; or
- (c) by mailing these records to the department if the records cannot be maintained at the closed facility.

(2) Owners and operators must submit a completed tank closure report to the department within 30 days of closure on a form designated by the department.

#### 17.56.706 REQUIREMENT TO EMPTY NONCOMPLIANT USTS

(1) The department may require an owner or operator to immediately empty an UST system upon a finding that the UST system is not in compliance with any of the requirements in ARM Title 17, chapter 56, subchapters 2, 3, 4 or 7 and that allowing the contents to remain in the UST system poses a risk to public health or the environment.

Sub-Chapter 8  
Financial Responsibility

17.56.801 APPLICABILITY (1) This subchapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in ARM 17.56.102 and in this rule.

(2) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in ARM 17.56.802.

(3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(4) The requirements of this subchapter do not apply to owners and operators of any UST system exempted from this subchapter by ARM 17.56.102(2), (3), (4), (5), or (6).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in ARM 17.56.802.

17.56.802 COMPLIANCE DATES Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the US securities and exchange commission (SEC), Dun and Bradstreet, the energy information administration, or the rural electrification administration; effective date of this rule.

(2) All petroleum marketing firms owning 100-999 USTs; effective date of this rule. (3) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1990.

(4) All petroleum UST owners not described in (1), (2), or (3) of this rule, including all local government entities; October 26, 1990.

17.56.803 DEFINITION OF TERMS For the purposes of this subchapter, the following terms have the meanings given in this rule:

(1) "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected or intended by



the tank owner or operator.

(2) "Bodily injury" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(3) "Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

(4) "Director" means the director of the department.

(5) "Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

(a) a 10-K report submitted to the SEC;

(b) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(c) annual reports submitted to the energy information administration or the rural electrification administration.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

(6) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(a) by EPA or the state to require corrective action or to recover the costs of corrective action;

(b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(c) by any person to enforce the terms of a financial assurance mechanism.

(7) "Occurrence" includes an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

(8) "Owner or operator", when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(9) "Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(10) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(11) "Property damage" shall have the meaning given this term by the applicable law of this state. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in

liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(12) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and 17.56.820, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state required mechanism, or a state.

(13) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(14) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(15) "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

(a) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tank used for storing heating oil for consumptive use on the premises where stored;

(c) septic tank;

(d) pipeline facility (including gathering lines)

regulated under:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.); or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.); or

(iii) which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in (i) or (ii) above.

(e) surface impoundment, pit, pond, or lagoon;

(f) storm-water or wastewater collection system;

(g) flow-through process tank;  
(h) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or  
(i) storage tank situated in an underground area (such as a basement, cellar, mineworking, draft, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in (a)-(i) above.

(16) "UST system" or "tank system" means an underground storage tank as defined in this subchapter, connected underground piping, underground ancillary equipment, and containment system, if any.

17.56.805 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY (1) Owners or operators of petroleum

underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following peroccurrence amounts:

(a) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(b) For all other owners or operators of petroleum underground storage tanks; \$500,000.

(2) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) For owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and

(b) For owners or operators of 101 or more petroleum underground storage tanks, \$2 million.

(3) For the purposes of (2) and (6) of this rule, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Except as provided in (5) of this rule, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(a) Taking corrective action;  
(b) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or  
(c) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in (1) and (2) of this rule.

(5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(6) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(7) The amounts of assurance required under this rule exclude legal defense costs.

(8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

17.56.806 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS (1) Subject to the limitations of (2) of this rule, an owner or operator may use any one or combination of the mechanisms listed in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817, and 17.56.820 to demonstrate financial responsibility under this subchapter for one or more underground storage tanks.

(2) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not

consolidated with the financial statements of the guarantor.

17.56.807 FINANCIAL TEST OF SELF-INSURANCE (1) An owner or operator, and/or guarantor, may satisfy the requirements of ARM 17.56.805 by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of (2) or (3) of this rule based on year-end financial statements for the latest completed fiscal year.

(2)(a) The owner or operator, and/or guarantor, must have a tangible net worth of at least 10 times:

(i) The total of the applicable aggregate amount required by ARM 17.56.805, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this rule;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 165.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

(b) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(c) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in (4) of this rule.

(d) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the US securities and exchange commission, the energy information administration, or the rural electrification administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(e) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(3)(a) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in ARM

17.56.805(2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

(b) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(c) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(d) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in (4) of this rule.

(e) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the US securities exchange commission, the energy information administration or the rural electrification administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) To demonstrate that it meets the financial test under (2) or (3) of this rule, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instruction in brackets are to be replaced by the relevant information and the brackets deleted:

**Letter from Chief Financial Officer**

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of selfinsurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground

storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under 40 CFR 280.95 by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under 40 CFR 280.95. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under 40 CFR 280.95 by the tank identification number provided in the notification number provided in the notification submitted pursuant to 40 CFR 280.22 or ARM 17.56.902.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations Amount

Closure (264.143 and 265.143) .....	\$
Post-Closure Care (264.145 and 265.145) .....	\$
Liability Coverage (264.147 and 265.147) .....	\$
Corrective Action (264.101(b)) .....	\$
Plugging and Abandonment (144.63) .....	\$
Closure .....	\$
Post-Closure Care .....	\$
Liability Coverage .....	\$
Corrective Action .....	\$
Plugging and Abandonment .....	\$
Total .....	\$

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer or opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of ARM 17.56.807(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of ARM 17.56.807(3) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ..\$
2. Amount of corrective action, closure and post-closure care costs, liability coverage,

and plugging and abandonment costs covered  
by a financial test, and/or guarantee .....\$

3. Sum of lines 1 and 2 .....\$

4. Total tangible assets .....\$

5. Total liabilities [if any of the amount  
reported on line 3 is included in total  
liabilities, you may deduct that amount from  
this line and add that amount to line 6] .....\$

6. Tangible net worth [subtract line 5 from  
line 4] .....\$

Yes No

7. Is line 6 at least \$10 million? .....

8. Is line 6 at least 10 times line 3? .....

9. Have financial statements for the latest  
fiscal year been filed with the Securities  
and Exchange Commission? .....

10. Have financial statements for the latest  
year been filed with the Energy Information  
Administration? .....

11. Have financial statements for the latest  
fiscal year been filed with the Rural  
Electrification Administration? .....

12. Has financial information been provided  
to Dun and Bradstreet, and has Dun and  
Bradstreet provided a financial strength  
rating of 4A or 5A? [Answer "Yes" only  
if both criteria have been met.] .....

#### Alternative II

1. Amount of annual UST aggregate coverage  
being assured by a test, and/or guarantee .....\$

2. Amount of corrective action, closure and  
post-closure care costs, liability coverage  
and plugging and abandonment costs covered  
by a financial test, and/or guarantee .....\$

3. Sum of lines 1 and 2 .....\$

4. Total tangible assets .....\$

5. Total liabilities [if any of the amount  
reported on line 3 is included in total  
liabilities, you may deduct that amount from  
this line and add that amount to line 6] .....\$

6. Tangible net worth [subtract line 5 from  
line 4] .....\$

7. Total assets in the US [required only if less  
than 90% of assets are located in the US] .....\$

Yes No

8. Is line 6 at least \$10 million? .....



9. Is line 6 at least 6 times line 3? .....

10. Are at least 90% of assets located in the US [If "No," complete line 11.] .....

11. Is line 7 at least 6 times line 3? .....

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets .....\$

13. Current liabilities .....\$

14. Net working capital [subtract line 13 from line 12] .....\$

Yes No

15. Is line 14 at least 6 times line 3? .....

16. Current bond rating of most recent bond issue .....

17. Name of rating service .....

18. Date of maturity of bond .....

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? .....

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in ARM 17.56.807(4) as such rule was constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(5) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(6) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of (2) or (3) and (4) of this rule, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(7) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the yearend financial statements, or within 30 days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within 10 days.

17.56.808 GUARANTEE (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

- (a) A firm that:
  - (i) possesses a controlling interest in the owner or operator;
  - (ii) possesses a controlling interest in a firm described under (i) above; or
  - (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,
- (b) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(2) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of ARM 17.56.807 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in ARM 17.56.807(4) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that he no longer meets the requirements of the financial test of ARM 17.56.807(2) or (3) and (4), the guarantor must notify the owner or operator within 10 days of receiving such notification from the director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in ARM 17.56.828(3).

(3) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## **Guarantee**

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Montana Department of Environmental Quality and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

### **Recitals.**

(1) Guarantor meets or exceeds the financial test criteria of ARM 17.56.807(2) or (3) and (4) and agrees to comply with the requirements for guarantors as specified in ARM 17.56.808(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies ARM Title 17, chapter 56, subchapter 8 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating and above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if grantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related form of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Montana Department of Environmental Quality and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Director of the Montana Department of Environmental Quality has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from

the Director, shall fund a standby trust fund in accordance with the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with ARM Title 17, chapter 56, subchapter 6, the guarantor upon written instructions from the Director shall fund a standby trust in accordance with the provisions of ARM 17.56.824, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust in accordance with the provisions of ARM 17.56.824 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of ARM 17.56.807(2)-(4), the guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to ARM Title 17, chapter 56.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of ARM Title 17, chapter 56, subchapter 8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of

the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Montana Department of Environmental Quality, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in ARM 17.56.808(3) as such rule was constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[name of person signing]

[Title of person signing]

Signature of witness or notary:

(4) An owner or operator who uses a guarantee to satisfy the requirements of ARM 17.56.805 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

#### 17.56.809 INSURANCE AND RISK RETENTION GROUP COVERAGE

(1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining liability insurance that conforms to the requirements of this rule from a qualified insurer or risk retention group. Such insurance may be in the form of a

separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy must be amended by an endorsement worded as specified in (a) below, or evidenced by a certificate of insurance worded as specified in (b) below, except that instruction in brackets must be replaced with the relevant information and the brackets deleted:

(a) Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the

policy; provided however, that any provisions inconsistent with (a)-(e) of this paragraph 2 are hereby amended to conform with (a)-(e).

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ARM 17.56.807 through 17.56.811, 17.56.815 through 17.56.817.
- c. Whenever requested by the Director, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" "Group"] within 6 months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in ARM 17.56.809(2)(a) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(b) Certificate of Insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certified that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.] for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in paragraph 1:

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider or corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in ARM 17.56.807 through 17.56.811,



17.56.815 and 17.56.816.

c. Whenever requested by the Director of the Montana Department of Environmental Quality, the ["Insurer" or "Group"] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within 6 months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in ARM 17.56.809(2)(b) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(3) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

17.56.810 SURETY BOND (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the US Department of the Treasury.

(2) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

**Performance Bond**

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture,"

"partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$

Annual aggregate \$

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such

financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with ARM Title 17, chapter 56, subchapter 6, and the Director of the Montana Department of Environmental Quality's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ARM Title 17, chapter 56, subchapter 4, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Montana Department of Environmental Quality that the Principal has failed to ["take corrective action, in accordance with ARM Title 17, chapter 56, subchapter 6 and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with ARM Title 17, chapter 56 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum

into the standby trust fund as directed by the Director under ARM 17.56.824.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Director under ARM 17.56.824.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in ARM 17.56.810(2) as such rule was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

[State of Incorporation:

[Liability limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of ARM 17.56.805 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instruction from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

17.56.811 LETTER OF CREDIT (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this rule. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**Irrevocable Standby Letter of Credit**

[Name and address of issuing institution]

Director

Montana Department of Environmental Quality

PO Box 200901, Metcalf Building

Helena, Montana 59620-0901

Attn: UST Program

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at

the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] US dollars (\$[insert dollar amount]), available upon presentation by you of (1) your sight draft, bearing reference to this letter of credit, No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource

Conservation and Recovery Act of 1976, as amended and the applicable state laws and rules."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or

operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instruction.

We certify that the wording of this letter of credit is identical to the wording specified in ARM 17.56.811(2) as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(3) An owner or operator who uses a letter of credit to satisfy the requirements of ARM 17.56.805 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under ARM 17.56.824. This standby trust fund must meet the requirements specified in ARM 17.56.817.

(4) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

#### 17.56.815 MONTANA PETROLEUM TANK RELEASE CLEANUP FUND

(1) An owner or operator may satisfy any part of the applicable requirements of ARM 17.56.805 for underground storage tanks located in Montana by use of the petroleum tank release cleanup fund created by 75-11-313, MCA. The burden of proof is upon the owner or operator to prove compliance with all necessary prerequisites for coverage by the petroleum tank release cleanup fund.

(2) If an owner or operator uses the petroleum tank release cleanup fund as partial satisfaction of the coverage requirements of ARM 17.56.805, the owner or operator may demonstrate that remaining coverage requirements are met by certifying a tangible net worth equal to that amount.

(3) Certification of tangible net worth must be based on year-end financial statements for the latest completed calendar year and documented on a form approved by the department.

17.56.816 TRUST FUND (1) An owner or operator may satisfy the requirements of ARM 17.56.805 by establishing a trust fund that conforms to the requirements of this rule. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2) The wording of the trust agreement must be identical to the wording specified in ARM 17.56.817(2)(a), and must be accompanied by a formal certification in ARM 17.56.817(2)(b).

(3) The trust fund, when established, must be funded for a full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(5) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(6) Within 60 days after receiving a request from the owner or operator for release of funds as specified in (4) or (5) of this rule, the director will instruct the trustee to release to the owner or operator such funds as the director specifies in writing.

17.56.817 STANDBY TRUST FUND (1) An owner or operator using any one of the mechanisms authorized by ARM 17.56.808, 17.56.810, or 17.56.811 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2)(a) The standby trust agreement must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:



## **Trust Agreement**

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of " or "a national bank"], the "Trustee."

[Whereas, the Montana Department of Environmental Quality, an agency of the Montana state government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee; Now, therefore, the Grantor and the Trustee agree as follows:

### **Section 1. Definitions.**

As used in this Agreement:

- (a) "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) "Trustee" means the trustee who enters into this Agreement and any successor Trustee.
- (c) "Department" means the Montana Department of Environmental Quality.
- (d) "Director" means the Director of the Department.

### **Section 2. Identification of the Financial Assurance Mechanism.**

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

### **Section 3. Establishment of Fund.**

The Grantor and the Trustee hereby establish a trust fund,

the "Fund," for the benefit of the State of Montana acting through the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.]

Payments made by the provider of financial assurance pursuant to the Director of the Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ARM 17.56.805.

The Trustee shall reimburse the Grantor, or other persons as specified by the Director in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a1 et seq., including one which may be created, managed,

underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the

extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Section 10. Advise of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director of the Montana Department of Environmental Quality to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a

change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

#### Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Environmental Quality if the Grantor ceases to exist.

#### Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Montana Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

#### Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Montana Department of Environmental Quality issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

#### Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of State of Montana, or the Comptroller of the Currency in the case of National Association banks.

#### Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below

certify that the wording of this Agreement is identical to the wording specified in ARM 17.56.817(2)(a) as such rule was constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

(3) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] or [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(4) The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(5) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

**17.56.820 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR** (1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in

this subchapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of ARM 17.56.805.

(2) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

17.56.821 CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE (1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in ARM 17.56.822, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the director of such failure and submit:

(a) The name and address of the provider of financial assurance;

(b) The effective date of termination; and

(c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with ARM 17.56.824(2).

17.56.822 REPORTING BY OWNER OR OPERATOR (1) An owner or operator must submit the appropriate forms listed in ARM 17.56.823(2) documenting current evidence of financial responsibility to the director:

(a) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under ARM 17.56.505 or 17.56.602.

(b) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:



(i) commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code, naming a provider of financial assurance as a debtor,

(ii) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) failure of a guarantor to meet the requirements of the financial test,

(iv) other incapacity of a provider of financial assurance; or

(c) As required by ARM 17.56.807(7) and 17.56.821(2).

(2) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under ARM 17.56.902.

(3) The director may require an owner or operator to submit evidence of financial assurance as described in ARM 17.56.823(2) or other information relevant to compliance with this subchapter at any time.

17.56.823 RECORDKEEPING (1) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank until released from the requirements of this subchapter under ARM 17.56.825. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the department.

(2) An owner or operator must maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in ARM 17.56.807 through 17.56.811, and 17.56.815 or 17.56.816 must maintain a copy of the instrument worded as specified.

(b) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(c) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(d) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(e) An owner or operator covered by the Montana petroleum tank release cleanup fund must maintain on file a copy of any evidence of coverage supplied by or required by the state under ARM 17.56.815.

(f) An owner or operator using an assurance mechanism specified in ARM 17.56.807 through 17.56.811, 17.56.815 and 17.56.816 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of ARM Title 17, chapter 56, subchapter 8.

The financial assurance mechanism[s] used to demonstrate financial responsibility under ARM Title 17, chapter 56, subchapter 8, is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

#### 17.56.824 DRAWING ON FINANCIAL ASSURANCE MECHANISMS

(1) The director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the director pursuant to subchapters 5 or 6 of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of (2)(a) or (2)(b)(i) or (ii) of this rule are satisfied.

(2) The director may draw on a standby trust fund when:

(a) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under ARM Title 17, chapter 56, subchapter 6; or

(b) The director has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and a third-party liability claim should be paid. The certification must be worded as follows, except that instruction in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[ ].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary) Date

(ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subchapter and the director determines that the owner or operator

has not satisfied the judgment.

(3) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under (2) of this rule may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under (2)(b)(i) of this rule, and valid court orders under (2)(b)(ii) of this rule.

17.56.825 RELEASE FROM THE REQUIREMENTS (1) An owner or operator is no longer required to maintain financial responsibility under this subchapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by ARM Title 17, chapter 56, subchapter 7.

17.56.827 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE (1) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code, naming an owner or operator as debtor, the owner or operator must notify the director by certified mail of such commencement and submit the appropriate forms listed in ARM 17.56.824(2) documenting current financial responsibility.

(2) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), US Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in ARM 17.56.808.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after

such notification, he must notify the director.

(4) Within 30 days after receipt of notification that the Montana petroleum release cleanup fund is incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

17.56.828 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS (1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required, or

(b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by ARM 17.56.805 of this subchapter. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

## Sub-Chapter 9 Notification

17.56.901 INTERIM NOTIFICATION REQUIREMENTS (1) On or before May 8, 1986, each owner of an underground storage tank currently in use must submit, in the form prescribed in (9) of this rule, a notice of the existence of such tank to the department.

(2) On or before May 8, 1986, each owner of an underground storage tank taken out of operation after January 1, 1974 (unless the owner knows that such tank has been removed from the ground) must submit, in the form prescribed in (9) of this rule, a notice of the existence of such tank to the department.

(3) Any owner who brings an underground storage tank into use after May 8, 1986, must, within 30 days of bringing such tank into use, submit, in the form prescribed in (9) of this rule, a notice of the existence of such tank to the department.

(4) Owners required to submit notices to the department under (1)-(3) of this rule must provide the required notice for each underground storage tank they own. Owners may provide notice of several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(5) Notices required to be submitted under (1)-(3) of this rule must provide all of the information indicated on the prescribed form described in (9) of this rule for each tank for which notice must be given.

(6) Any person who deposits regulated substances from December 9, 1985 through May 9, 1987, in an underground storage tank must make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under (1)-(3) of this rule.

(7) Beginning 30 days after the department issues new tank performance standards pursuant to 75-10-405, MCA, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under (1)-(3) of this rule.

(8) Sections (1)-(3) of this rule do not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(9) The form which must be used for notice submitted to the department under this rule is department form, "Notification for Underground Storage Tanks", EPA form 7530-1 (11/85) DHES Revised 2/86.

(10) The department hereby adopts and incorporates by reference the form entitled "Notification for Underground Storage Tanks", EPA form 7530-1 (11/85) DHES Revised 2/86, which form asks for information including but not limited to ownership, location, age, material of construction, capacity, use, and internal and external construction. Copies of this form may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

17.56.902 NOTIFICATION REQUIREMENTS (1) An owner who brings an underground storage tank system into use after May 8, 1986, must within 30

days of bringing such tank into use, submit a notice of existence of such tank system to the department in the form prescribed by the department.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the state in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub.L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form prescribed by the department.

(2) Owners required to submit a notice under (1) must provide a notice to the department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(3) Notice required to be submitted under (1) must provide all of the information in sections I through VI of the prescribed form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in section VII of the prescribed form for each tank for which notice must be given.

(4) Owners and operators of new or modified UST systems must certify in the notification form:

(a) that they have complied with the financial responsibility requirements under subchapter 8; and

(b) must provide the following information:

(i) the location of each tank system;

(ii) ownership of each tank system;

(iii) status of each tank system;

(iv) the date of each tank system installation;

(v) the estimated total capacity of each tank system;

(vi) tank and piping material;

(vii) the substance currently or last stored in each tank system; and

(viii) any other information required in the notification form necessary to ensure tanks can be adequately identified for regulatory purposes.

(5) Owners and operators of new or modified UST systems must ensure that, upon completion of all work and testing performed pursuant to the installation permit, the licensed installer or department inspector completes a certification of compliance in accordance with the requirements in ARM 17.56.201(1)(e).

(6) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's notification obligations under (1). The form prescribed by the department shall be used to comply with this requirement.

(7) Owners and operators of existing or new UST systems must notify the department when any of the information submitted on the form has changed, such as upgrading or repairing new or existing tanks or pipes, or change of

owner, or contact person, or meeting the requirements specified in ARM 17.56.202 or subchapter 8.

17.56.903 CHANGE IN OWNERSHIP (1) The purchaser of an UST system shall provide written notification to the department within 30 days after any sale.

(2) The purchaser shall also provide the information required by ARM 17.56.902(7).

(3) Until notification of a new owner, or other responsible party, has been received by the department in accordance with this rule, annual tank registration fees will continue to be assessed to the owner, or other responsible party, of record with the department.



Sub-Chapter 10  
Tank Fees and Delegation to Local Governments

17.56.1001 TANK FEE SCHEDULE (1) Owners or operators of underground storage tanks which have not been closed in accordance with ARM 17.56.702 shall pay an annual registration fee for each underground storage tank owned or operated. In order to schedule annual renewal dates, the department may prorate the registration fee to cover registration periods not equal to 12 months.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) before the department will issue a tank certificate under (3):

(a) underground storage tanks with a capacity of more than 1,100 gallons, \$108 per tank;

(b) underground storage tanks with a capacity of 1,100 gallons or less, \$36 per tank.

(3) The annual tank registration fees in (2) apply to annual tank registration fees that are due on or after January 1, 2004.

17.56.1002 GRANTS TO LOCAL GOVERNMENTAL UNITS (1) Local governmental units may apply for grants from the department for the purposes of designation under ARM 17.56.1003. Grant money received from the department may be used only for the purchase of equipment or basic training of personnel or both necessary for designation under ARM 17.56.1003 and specified by the department. Grant money received from the department may not be used for equipment or training not required for designation under ARM 17.56.1003 and not specified by the department. Grants are generally limited to the amount of \$2,000.00 per local governmental unit for equipment or personnel training, or both, or to such other amount specified in the written notice of grant award made by the department. No grant may be made or used for any equipment, training or period of time following designation under ARM 17.56.1003, unless approved by the department. Grantees shall comply with all conditions and requirements contained in the written notice of grant award.

(2) Applications for award of a grant shall be submitted to the department on a form prescribed by the department. The form shall include and the applicant shall provide, the following information:

(a) the official name and address of the applicant;

(b) the name, address and telephone number of the person preparing the grant request;

(c) the amount of the grant being requested;

(d) the purpose for which the grant is requested;

(e) if for equipment, a list of the equipment, followed by a description of each item of equipment, including the actual or estimated cost of the item, and the manufacturer and supplier, for each piece of equipment intended to be purchased;

(f) if for training, a list of those personnel who will attend the training,

followed by a description of the training, including the cost, location, and provider of the training, for each person intended to be trained; and

(g) a narrative of how the equipment or training will be used in the program for which the grant is sought.

(3) Grant applications must also contain a letter of intent, signed by the chief financial officer of the local governmental unit submitting the grant application, stating the intent of the local governmental unit to use the grant money applied for only for the purposes of equipment or training for the purposes of application for designation under ARM 17.56.1003 and to abide by any grant conditions specified by the department.

(4) The grant application, together with all lists and descriptions shall be sent to the department no later than 90 days prior to the date on which the grant funds are expected or needed by the applicant. Upon receipt of the application the department shall review it for completeness and notify the applicant of any missing information or other deficiency in the application. Upon receipt of a completed application the department shall make its determination concerning the approval or disapproval of the grant application. An application may be approved for all or any part of the grant applied for. The department shall issue the grant award upon approval of the application.

(5) The department may approve or disapprove any grant application in whole or in part. In approving or disapproving an application for a grant under this rule, the department shall consider:

(a) the extent to which training or equipment is necessary for designation under ARM 17.56.1003;

(b) the extent to which the training or equipment applied for fulfills the designation needs of the applicant;

(c) the extent to which the same training or equipment is available from another source at a lower cost;

(d) the nature of the applicant's program for which certification will be sought;

(e) the availability of other equipment, training or financial resources to the applicant;

(f) the amount of grant funds available to the department; and

(g) the extent to which grant applications of the applicant have previously been approved or disapproved.

(6) Grant awards approved under (4) may be spent only for the purposes for which applied and approved. The department may request and the grantee shall provide any proof requested by the department showing that the grantee complied with the requirements of this section.

17.56.1003 DESIGNATION OF LOCAL UST PROGRAMS (1) A local governmental unit may apply to the department for designation as an implementing agency for the purposes of implementing underground storage tank systems leak prevention and inspection programs conducted by and within that local governmental unit. Upon designation under this rule, an implementing agency may apply to the department for reimbursement of authorized services, in

the manner provided by ARM 17.56.1004, and may enforce any rule in ARM Title 17, chapter 56, which it is authorized or required by any such rule to administer, in the same manner in which the department is authorized to enforce these rules.

(2) Applications for designation as an implementing agency shall be submitted to the department on a form prescribed by the department. The form shall include and the applicant shall provide the following information:

- (a) the official name and address of the applicant;
- (b) the name, address and telephone number of the person preparing the application for designation;
- (c) a list of all the personnel to be used directly by the applicant in conducting the designated program, including for each such person, the person's:
  - (i) name, address and business telephone number; and
  - (ii) education, training, and experience in the professional, technical or programmatic area to which each person for whom reimbursement will be sought will be assigned in the local program.
- (d) a listing of all major equipment to be used directly by the applicant in conducting the program for which designation is sought, including the names of the operators of the equipment;
- (e) a description of the operation of the professional, technical or programmatic services to be conducted by the program, including the names of those persons directly involved in the service; and
- (f) a listing of those services for which reimbursement will be sought from the department after program designation, including the names of the person(s) providing the service, and the approximate total cost of the program per year.

(3) Designation applications must also contain a letter of intent, signed by the chief administrative officer of the local governmental unit submitting the application, stating an intent to abide by these rules and any conditions contained in the department's letter of designation.

(4) The application for designation, together with all descriptions, lists, forms and other exhibits shall be sent to the department no later than 90 days prior to the date on which designation is expected or intended by the applicant. Upon receipt of the application the department shall review it for completeness and notify the applicant of any missing information or other deficiency in the application. Upon receipt of a completed application, the department shall make its determination concerning the approval or disapproval of the application. An application may be approved for all or any part of or under different terms than the designation applied for. The department shall issue the designation letter upon approval of the application.

(5) In approving or disapproving an application for designation under this rule, the department shall consider:

- (a) The extent to which the training, equipment and personnel of the program will allow the local governmental unit to conduct competent inspections and enforcement to ensure compliance with these rules by owners and operators;
- (b) The ability of the applicant to maintain appropriate records of costs for

which reimbursement will be sought;

(c) The extent to which the applicant is or will be able to comply with the Montana Quality Assurance Plan for Inspections of Releases from Underground Storage Tanks;

(d) The extent to which the designation and resulting reimbursement will contribute to the viability of the applicant's program;

(e) The desirability of having an implementing agency in the geographic area of the applicant; and

(f) The amount of department funds available for reimbursement for the applicant's program.

(6) Within 30 days of approval of an application for designation the department shall issue a letter to the local governmental unit designating it as an implementing agency. The designation letter shall state that the local governmental unit is enabled to seek and receive reimbursement for authorized services and shall set forth any conditions or limitations determined necessary by the department. A designated local governmental unit shall enforce rules governing underground storage tank systems that it is authorized or required by any rule to administer.

(7) A local governmental unit designated by the department pursuant to this rule as an implementing agency shall immediately notify the department in writing when its ability to perform services authorized by these rules and the designation letter is lost, diminished or otherwise jeopardized by the loss or unavailability of trained personnel or equipment. Upon notification, the designation of the local governmental unit may be suspended by the department until such time as the local governmental unit provides evidence satisfactory to the department that the condition resulting in suspension has been remedied. The department may request and the local governmental unit shall provide, information determined necessary to redesignate a local unit of government following suspension under this subsection.

**17.56.1004 IMPLEMENTING AGENCY PROGRAM SERVICES AND REIMBURSEMENT** (1) Upon receipt of the department's designation of a local governmental unit as an implementing agency, the implementing agency office or program personnel shall at the request of the department and at other times as necessary, conduct authorized services on behalf of the department subject to the limitations or conditions contained in the department's letter of designation.

(2) Services conducted by an implementing agency shall be conducted in accordance with ARM Title 17, chapter 56, applicable industry standards, and limitations or conditions contained in the department's letter of designation. An implementing agency shall during the first 10 days of every calendar quarter, prepare and send to the department a report summarizing, in a manner acceptable to the department, all activity undertaken in the immediately preceding calendar quarter. Implementing agency personnel shall, at the request of the department, provide the department with copies of any inspection report, record, statement, time sheet, enforcement document or other document relating to services for which reimbursement is or may be sought under these rules.

(3) Each implementing agency shall maintain accurate and complete records of the time and services for which reimbursement will be sought under this rule. By the tenth day of each calendar quarter, the implementing agency shall send to the department on a form determined by the department a statement showing the number of hours, to the nearest one-half of an hour, spent by each person in the performance of authorized services during the previous calendar quarter for which reimbursement is being claimed. The form shall designate the site and date for which the activity was conducted. The chief financial officer of each implementing agency submitting a statement shall on the face of the statement attest to the validity and accuracy of the statement. Upon receipt of the statement, the department shall determine whether sufficient information is contained in the statement and supporting material for reimbursement to be paid under this rule. The department shall notify the implementing agency of any deficiency. Upon receipt of sufficient information showing authorized services were carried out during the previous calendar quarter in accordance with ARM Title 17, chapter 56, applicable industry standards and any limitations or conditions contained in the department's designation letter, the department shall reimburse the local governmental unit at the rate of \$35.00 per hour. Claims for reimbursement not in accordance with this rule shall be denied. Claims shall be paid only within the limitations of departmental budgets and legislative appropriations.

(4) Payments made under this rule shall be made no more frequently than quarterly by state warrant to the treasurer of the implementing agency. An implementing agency receiving reimbursement under this rule shall use the payment received only for expenses incurred in conducting authorized services under these rules.

#### 17.56.1005 REVOCATION AND SURRENDER OF DESIGNATION

(1) The department shall issue a letter to an implementing agency revoking the designation issued pursuant to ARM 17.56.1003 whenever the department determines that there is substantial evidence that:

(a) The implementing agency is not conducting authorized services in accordance with ARM Title 17, chapter 56, applicable industry standards or limitations or conditions contained in the department's designation letter;

(b) The implementing agency has intentionally submitted a claim for reimbursement for services which were not performed;

(c) Conditions exist warranting suspension of designation under ARM 17.56.1003 and those conditions show little or no hope of abating; or

(d) Insufficient funding exists at the current level of expenditure for the department to maintain the designation.

(2) A revocation of designation by the department is effective upon written or oral notice to the local governmental unit. Following revocation, the local governmental unit may not submit claims for services to the department which services were performed following revocation. Any claims so submitted are considered denied. The department shall reimburse the local unit of government

for services performed in accordance with these rules prior to revocation of designation.

(3) An implementing agency designated under ARM 17.56.1003 may surrender the designation of its program by 30 days written notice to the department accompanied by the surrender of its current designation letter. Services shall be conducted by the local governmental unit and reimbursement made pending receipt by the department of the notice required by this rule. Upon receipt of the notice, no reimbursement may be made for subsequent services by the local governmental unit. The department shall reimburse the local government unit for services performed in accordance with these rules prior to surrender of designation.

(4) A revocation of designation by the department under this rule may be appealed in writing to the director. The appeal shall be initiated by a letter to the director from the local governmental unit setting forth the grounds for appeal and attaching any written evidence relevant to the appeal, to which the department shall file a similar response. The director shall determine the appeal on the basis of the written submittals and shall sustain the revocation if he determines that there is substantial evidence of the conditions in (1)(a), (b), (c) or (d). The rules of civil procedure and evidence and Title 2, chapter 4, MCA, do not apply to the director's determination under this rule. The revocation is effective pending appeal to the director.